OVERSIGHT OF THE ANTIDUMPING ACT OF 1921

HEARING

BEFORE THE

SUBCOMMITTEE ON TRADE

OF THE

COMMITTEE ON WAYS AND MEANS

HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

FIRST SESSION

ON

THE ADEQUACY AND THE ADMINISTRATION OF THE ANTIDUMPING ACT OF 1921

NOVEMBER 8, 1977

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CONTENTS

MATERIAL SUBMITTED FOR THE RECORD

OVERSIGHT OF THE ANTIDUMPING ACT OF 1921

TUESDAY, NOVEMBER 8, 1977

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON TRADE,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 1301, Longworth House Office Building, Hon. Charles A. Vanik (chairman of the subcommittee) presiding.

Mr. VANIK. The subcommittee will be in order.

Today's hearing is the first of what will be a series of hearings continuing until next year on the administration of the Nation's unfair trade practices laws. We have scheduled all of our witnesses today contrary to our previous notice. There will be no hearing tomorrow.

The record will be open until November 21.

Also, there are a number of witnesses, so in order to have maximum time for questioning, oral statements will be limited to 5 minutes.

I believe that most observers would agree that in the past the antidumping laws have been extremely ineffective. Today's hearing will bring out just how ineffective the past administration of the law has been.

As Congressmen Rostenkowski, Steiger, and myself wrote to Secretary Blumenthal on October 13, concerning the *Zenith* case, "it appears to us that a burden of proof rests with the Treasury Department that its failure—in the *Zenith* antidumping case—has resulted in a loss of domestic production facilities and jobs which should have never been lost."

This is an oversight hearing, not a legislative hearing. But, we are seeking ideas and suggestions from the general public about ways the operation of the laws could be more effective and cases can proceed more quickly. At the same time, the law must be fair to our trading partners, and it must be perceived as such. The due process safeguards must be preserved.

I am concerned that so-called aggressive enforcement of the antidumping laws will be misunderstood overseas as meaning that cases are already decided in favor of the domestic producers and that America is erecting a massive nontrade barrier, which in the case of steel, could result in an embargo of all foreign steel from the country. Pursuing antidumping aggressively, if carried out unfairly, or if others believe it is carried out unfairly, could result in trade retaliation.

We must avoid the danger of swinging from nonenforcement of the law to overenforcement. I believe there is a middle ground that is based in law and due process for all concerned. I hope that these hearings will find that middle ground. I would like to submit at this point a copy of the press release announcing the hearing and background information prepared by the staff.

[The material referred to follows:]

[Press Release of October 31, 1977]

CHAIRMAN CHARLES A. VANIK (D., OHIO), SUBCOMMITTEE ON TRADE, COMMITTEE ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES

The Honorable Charles A. Vanik (D., Ohio), Chairman of the Subcommittee on Trade of the Committee on Ways and Means, U.S. House of Representatives, today announced that the Subcommittee on Trade will conduct two days of hearings on Tuesday and Wednesday, November 8 and 9, 1977 in connection with the Subcommittee's oversight responsibilities regarding the administration of the Antidumping Act of 1921, as amended. The hearings will be held in the Main Committee Room of the Ways and Means Committee in the Longworth Building beginning at 10:00 A.M. on Tuesday, November 8, and at 10:45 A.M. on Wednesday, November 9.

During the oversight hearings on the administration of the Antidumping Act of 1921, the Subcommittee will be particularly concerned with the issues of the adequacy of the existing statute to deal with the problems of unfair import pricing practices and the timely assessment of dumping duties following a finding of dumping by the Secretary of the Treasury.

Officials from interested Executive Branch agencies will be the first witnesses, with representatives from the Treasury Department and the U.S. Customs Service leading off, followed by a spokesman from the U.S. International Trade Commission. Testimony will be received by the Subcommittee from the interested public following the appearances of the Executive Branch witnesses.

Witnesses are on notice that in order to provide more time for questioning and discussion, the oral presentation of written statements will be limited to three (3) minutes strictly, to the followed immediately by questioning. The full statement will be included in the record. Also, in lieu of personal appearance, any interested persons or organizations may file a written statement for inclusion in the printed record.

Requests to be heard must be received by the Committee by the close of business Friday, November 4th. The request should be addressed to John M. Martin, Jr., Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Room 1102 Longworth House Office Building, Washington, D.C. 20515; telephone (202) 225-3625. Notification to those scheduled to appear and testify will be made by telephone as soon as possible after the filing deadline.

In this instance, it is requested that persons scheduled to appear and testify submit 30 copies of their prepared statement to the Committee office, Room 1102 Longworth House Office Building, by the close of business Monday, November 7th.

Persons submitting a written statement in lieu of a personal appearance should submit at least three (3) copies of their statement by the close of business Monday, November 21, 1977. If those filing written statements for the record of the printed hearing wish to have their statements distributed to the press and the interested public, they may submit 30 additional copies for this purpose if provided to the Committee during the course of the public hearing.

Each statement to be presented to the Subcommittee or any written statement submitted for the record must contain the following information:

1. The name, full address and capacity in which the witness will appear;
2. The list of persons or organizations the witness represents and in the case of associations and organization, their address or addresses, their total membership and where possible, a membership list; and
3. A topical outline or summary of the comments and recommendations in the full statement.

Mr. VANIK. Before I proceed to the hearing, I would like to ask first that we hear from our colleagues in the Congress.

Mr. Buchanan, I understand you have a brief statement that you would like to make. The committee will be very happy to hear from you. We know of your deep interest in the steel problem.

STATEMENT OF HON. JOHN BUCHANAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALABAMA

Mr. BUCHANAN. In light of the time constraints and the fact that the administration witnesses are waiting, I will ask unanimous consent to address the committee for 1 minute.

Mr. VANIK. Without objection, so ordered, with pleasure.

Mr. FRENZEL. You will be invited back regularly.

Mr. BUCHANAN. I want to thank, on behalf of the 170 other members of the Steel Caucus, you, Mr. Chairman, and members of the subcommittee, for your attention to the very serious situation threatening an industry vital to the economy and the security of the United States. I want to thank you for the proposal you have already suggested as a possible means to meet both the present crisis and the long-term problems of the steel industry.

I think everyone in the country, with the possible exception of the ITC and until recently the Treasury Department, has felt a good deal of dumping has taken place. I am glad for the first time that there is effort being made at vigorous enforcement of the law. I am sure it will be fair. The time has come for action.

Mr. Chairman and members of the subcommittee, I would like to thank you for holding these hearings and for all you have done to help alleviate the problem of foreign steel imports. It is obvious to all of us here today that the U.S. steel industry is in grave trouble. Since the mid-1950's, the role of the U.S. steel industry in world markets has declined dramatically. In 1955, the United States was the world's largest producer of steel with 39 percent of the total world output. Today, its share has declined to less than 20 percent, barely matching that of the European Common Market and Japan.

In 1955, the United States was a net importer of steel. By 1971, imports had grown to 18 percent of domestic consumption. Imports have been rising again in recent months and average 15 percent of consumption in the first half of 1977.

Steel imports for the month of September amounted to over 2 million tons, bringing the total for the year to date to just below 14 million tons. On this basis, it now appears that 1977 steel imports will exceed 19 million tons and, most importantly, account for better than 1 out of every 5 tons of steel consumed by American fabricators.

In the Birmingham area which I am privileged to represent, this situation has manifested itself in the closing of a number of plants and facilities. As of November 1, the Southern Electric Steel Corp. permanently shut down its Birmingham operation with a loss of over 220 jobs. At United States Steel's Fairfield Works, the most advanced, diversified plant in the Southeastern United States, literally hundreds of jobs and job opportunities have been lost. As recently as last Thursday, United States Steel was forced to close one if its Fairfield blast furnaces with the loss of over 180 jobs. Additionally, United States Steel has closed its cotton bale tie plant with the permanent loss of 150

to 160 job opportunities. United States Steel currently estimates that foreign imports have captured 26 to 28 percent of the Southeastern steel market. In the last 9 months, over 4 million tons of steel have been imported into the South—over one-quarter of total steel demand. The industry estimates that of every million tons of steel imported, 6,000 job opportunities are lost. Therefore, in the past 9 months, 24,000 opportunities for employment have been lost as a direct result of imports into the Southeast alone. It is the contention of many industry officials that these imports are coming into the country at less than their fair market value. I support this contention.

On August 5, 1977, the President asked the Council on Wage and Price Stability to prepare a report on economic conditions within the American steel industry, with emphasis on the reasons for cost and price escalation. Although the report has been portrayed in the news media as being damaging to the position of the steel industry, the report is actually quite supportive of the industry's position on the issue of foreign imports. The report states that steel production costs in Europe are at least as high as those of the United States, and that importation costs raise full costs substantially above those of domestic producers.

The report also points out that the Japanese steel production cost advantage is completely or nearly negated by importation costs. On the average, total Japanese costs would enable them to sell only 5 percent below U.S. prices, whereas they are currently discounting their products at 10 to 20 percent of U.S. prices. On page 63 of the report, the Council states that "the $248 net realized export price of Japanese steel appears to be substantially below our calculated Japanese production costs for 1976." Continuing on page 69, the Council concludes that "in 1976 and 1977 the Europeans must have been selling steel to the United States at prices less than the cost of production." Therefore, Mr. Chairman, both Japanese and European steel producers are discounting their products and dumping them on the U.S. market.

This is a situation where U.S. law is being violated and no action is being initiated by appropriate departments of the executive branch. Instead, private industry is beng forced to take on the very expensive burden of proving a situation which is becoming clearly demonstrable to all concerned.

For example, on Oct. 3, 1977, the Department of the Treasury issued its first affirmative dumping ruling in recent history, finding that five Japanese exporters of carbon steelplate are selling in the American market at prices substantially below their costs. In its finding, the Treasury Department assessed a dumping duty of 32 percent.

The Treasury Department's ruling, however, is only a preliminary one—and is subject to further hearings before it becomes final. In addition, if the final determination confirms sales at less than fair market value, the matter is then referred to the International Trade Commission for its ruling on whether these imports have injured or threaten to injure the domestic industry. The ITC is allotted another 3-month period to make its determination.

In my estimation, a period of one-half a year is much too long to wait for a final decision. In half a year, many thousands more Americans will be without jobs and additional steel companies will have to curtail, if not totally cease, operations.

If the administration plans to rely on the antidumping provisions to combat the massive influx of foreign imports—and I believe they do—then it is incumbent upon the Congress to revise the laws in two ways:

One: Place a greater part of the burden for identifying dumping practices on the Department of the Treasury rather than private industry. Currently, district customs officers are allowed to institute antidumping suits, but I know of no specific instance in which they have done so successfully.

Two: Streamline the time frame under which these investigations are carried out so that relief can be more quickly channeled to beseiged industries.

Regardless of what the administration and the Congress may do with regard to the antidumping laws, I do not believe that they will be sufficient to alleviate either the short- or long-term problem of foreign steel imports. While all of us prefer free and open trade, and expanding rather than contracting markets for the benefit of both domestic industry and our allies, free trade must be a two-way street. Until our friends in Europe and Japan realize this, additional measures will have to be taken.

The distinguished chairman of this subcommittee has proposed a number of intelligent, workable solutions to this problem. I wish to commend him for his timely, sensitive appraisal of this very difficult situation. Whichever route the chairman and other members of this committee may choose to take on this problem, I want to thank you for your attention to and concern for a problem which is threatening the very lifeblood of America.

Mr. VANIK. Thank you very much. Without objection, your entire statement will be admitted in the record as submitted.

I want to point out that I know you have taken a role in the Steel Caucus. What we want to explore today is what the circumstances of antidumping are, and we want to look at what has happened in the past.

Of course, in the hands of new administrators it may function; but we are always concerned about the way the process can fall apart and stop working. That is the real subject of today's hearing. I hope we come up with viable solutions.

Mr. BUCHANAN. Thank you for your leadership.

Mr. VANIK. I would ask at this time that the Government witnesses come forward: Mr. Mundheim, General Counsel of the Treasury, Mr. Robert Chasen, Commissioner of Customs, Robert Cornell, the Acting Director of Operations at the Trade Commission, and Bruce Hatton, the Director of the Office Congressional Liaison.

The ITC does not usually sit with Treasury. I do not think there is any great danger if they are at the same table, but it is up to you.

I noticed that there are very lengthy statements that Mr. Mundheim and Mr. Chasen have prepared, and I would appreciate it if we could maximize the time for questioning, in light of the newspaper accounts and investigations that are underway that are of great interest and concern to us. I would suggest that you try in your statements to make a summation of the propositions that are set forth in them written statements.

PANEL CONSISTING OF ROBERT H. MUNDHEIM, GENERAL COUNSEL, DEPARTMENT OF THE TREASURY; ROBERT E. CHASEN, COMMISSIONER OF CUSTOMS; PETER EHRENHAFT, DEPUTY ASSISTANT SECRETARY FOR TARIFF AFFAIRS, DEPARTMENT OF THE TREASURY; GLENN ROBERT DICKERSON, DEPUTY COMMISSIONER OF CUSTOMS; AND JOHN O'LOUGHLIN, DUTY ASSESSMENT DIVISION

Mr. MUNDHEIM. Thank you. I would just like to introduce the people here with me. On my left is Peter Ehrenhaft, Deputy Assistant Secretary for Tariff Affairs. On my right is Robert Chasen, Commissioner of Customs. Then we have Bob Dickerson, Deputy Commissioner of Customs and on the end we have Jack O'Loughlin of the Duty Assessment Division.

I will try to compress what is already a compressed statement. I thought it might be useful to begin in this oversight hearing to briefly tell you what we have done since the 1974 amendment was enacted. We have initiated 58 antidumping investigations involving $9.4 billion in trade. In 26 of those investigations, we have made determinations of sales at less than fair value. The ITC has found injury in 11 of those cases. Sixteen of the cases are still pending.

I would also like to review for you quickly our activities with respect to steel imports. As you know, on March 8, 1977, the Gilmore Steel Corp. filed a petition alleging the dumping of carbon plate steel from Japan. We made a tentative determination of sales at less than fair value with dumping margins of 32 percent on September 30.

On September 20, United States Steel filed what is in effect four petitions alleging dumping of a broad variety of Japanese steel products. Since that time we have had numerous other petitions relating to steel, and we are now dealing with 16 petitions involving steeel imports of $1.6 billion from nine countries.

The handling of those petitions within the time constraints imposed by the statute, will test the administrative feasibility of a full-scale implementation of the act.

I think this committee has expressed concern and interest in how Treasury staffs itself to handle this volume of cases. The Antidumping Act is administered through the Office of Tariff Affairs in the Office of the General Counsel and through Customs. Customs' role in that process will be explained by Mr. Chasen later.

The Office of Tariff Affairs is responsible for reviewing Customs' recommendations and for considering with Customs changes in established procedures which would facilitate the administration of the Antidumping Act. This staff in this part of Treasury is relatively small; and in the supervisory echelons, relatively new. As General Counsel, I have the overall responsibility, and, as you know, have been in office since August 4. Mr. Ehrenhaft is the senior official in the Office of Tariff Affairs. He has been in his post only since September 12. Mr. Ehrenhaft is assisted by four professional staff members. Two lawyers in the General Counsel's office are also assigned to serve Tariff Affairs. Mr. Ehrenhaft and I are agreed that some staff must be added if the responsibilities for administering the Antidumping Act are to be successfully discharged. Active recruiting is taking place; in the

meantime, two experienced staff members from other areas have been detailed to work on it on an interim basis.

One of the provisions added by the 1974 amendment is the cost of production provision. One thing to note about cases involving cost of production is that they require Treasury to gather information about three types of information: Home market prices, prices in the third country, and cost of production information. The steel cases have presented, and are likely to present, a variety of different problems in implementing this new provision of the 1974 amendments.

In the *Gilmore* case, for example, the petition alleged sales below cost of production. Treasury sought cost of production information from each of the Japanese manufacturers involved in that case. The manufacturers refused to supply the requested information. They seemed to be concerned about making available what they considered to be highly sensitive information. Thus, the tentative decision in *Gilmore* had to resort to the best available information.

We now have some indications that possibly cost of production information from steel companies may be made available in at least some of the steel antidumping cases we have still under consideration. Again, Mr. Chasen will deal with the problem of how that information is collected and analyzed. To give you some notion of the complexity of that process, the fact that it must be collected in the first instance from foreign producers means that there are limits that are placed on the extent to which one can speed up the investigation process is one example.

There are some other aspects of dealing with cost of production problems which are detailed in my statement and which, I assume, will be inserted in the record, which I will not go over at this time.

Questions also have been raised about the effectiveness of the Antidumping Act. I would like to take a few minutes to address that question. You will recall that in the *Gilmore* case, we made a tentative determination of sales at less than fair value and found weighted average margins of 32 percent. Since appraisement has been withheld, I understand that virtually no further imports of Japanese imports of carbon steel plate have entered the United States. This has occurred because the dumping margins announced in the tentative determination were based upon comparisons between the appropriate measure of fair value and U.S. sales prices during the period October 1976 through March 1977. Since that time, Japanese sales prices have tended to firm up.

Nevertheless, the importers are required to post bond on the current value of their imports equal to the weighted average margins of dumping determined in the earlier period.

In relating this result in *Gilmore*, I am not suggesting that it be read as a complete answer to the question of effectiveness; but it is one measure. It also underscores the fact that a tentative decision is critical because at that point possible dumping duties apply.

I would also like to spend a moment on another area about which this committee has indicated concern; namely, our procedures for assessment of duties under section 202 of the act. That provision requires the assessment of a special dumping duty in an amount equal to the difference between the price of the U.S. and foreign market value.

Thus, the statute requires us to ascertain specific dumping margins in connection with each entry of merchandise subject to a dumping finding.

To properly fulfill our responsibilities under this provision, we must, for example, in a case where the cost of production is at issue, perform the complicated investigation which I have earlier described. It is clear that the character of the information required necessitates a significant passage of time between the actual entry of the merchandise which is to be appraised and the availability of the information on which we must make a judgment of fair value.

I think Mr. Chasen will later alert you to some other aspects of the assessment of duties, which also results in a fairly substantial passage of time between the entry of merchandise and its actual assessment.

Now, Mr. Chairman, you talked about the delay which has been experience in the appraising and liquidating Japanese television sets subject to a 1971 dumping finding. Although I think it is not appropriate to discuss the particulars of a case which we have under active consideraiton, I believe I could make a comment which may be helpful and proper.

It is not possible for me satisfactorily to justify to you the more than 5-year backlog of entries in this case. There are, however, two special problems which have contributed significantly to the unusual delay.

First, we faced an unprecedented number of complex requests for adjustments in circumstances of sale, that is, differences in the marketing experience in the two countries, and for adjustments occasioned by physical differences between the television sets sold in the United State and Japan. A great deal of time has been consumed in trying to determine the appropriateness of many of these adjustments, particularly in gathering, verifying, and analyzing the vast amount of data submitted by the exporters.

Second early this year information came to light concerning possible fraudulent evasion of the dumping finding by use of a double pricing system on imports, that is, the use of illegal rebates. This investigation is a continuing one and has further inhibited our ability to proceed with dumping appraisements. This aspect has also attracted the attention of the Department of Justice, which is considering the possibility of criminal action.

We fully appreciate and share your concern over this delay. Treasury is actively considering an approach to this problem which I hope will permit us to bring liquidations much more up to date in a reasonable period of time.

Commissioner Chasen will shortly explain to you the steps customs has taken and is taking to improve our ability to keep dumping appraisements generally up-to-date.

I would like, if you will permit me, to take a few more minutes to tell you about some of the improvements which we have implemented and to tell you a little bit about what we are thinking about doing in terms of making our activities more effective. We have initiated a procedure under which the petitions received are made available for public inspection and comment even before we publish a formal notice of investigation. We are paying more attention to explaining in our pub-

lished notices the reasoning behind our decisions. We have published guidelines governing ex-parte communications.

We have built upon our experience in Gilmore to revise the cost of production questionnaires being distributed to the Japanese producers in the *U.S. Steel* case. The questionnaires now seek average cost and price data for each of the products in each year of the 3-year period we believe must be reviewed and seek aggregated data on certain types of costs for the period of investigation. We are considering retaining on an ad hoc basis, consultants from other branches of Government and from the private sector to deal with the highly specialized problems which arise in our steel cases.

Although Mr. Ehrenhaft and I are relatively new in administering the Antidumping Act, we are convinced that a full scale Treasury analysis of the act to see what changes are needed is desirable, and such a review will be undertaken. Any review and any suggested changes must recognize that the Antidumping Act and its administration have a substantial impact on our trade relations. Mr. Ehrenhaft has just returned from the annual meeting of the GATT Antidumping Committee in Geneva at which he was pressed by both the Japanese and European representatives concerning certain of our practices.

In our focus on making the Antidumping Act an effective remedy against unfair trade practices, we do not want to make it a tool for improperly shutting off foreign trade and inviting retaliation.

Mr. Chairman, I do want to reiterate the commitment I made to you last September to administer the Antidumping Act firmly and fairly. The present period of intense use of the Antidumping Act will undoubtedly highlight the problems of doing that job successfully. As we face this period of testing it is reassuring to know this committee's continuing interest in making the act a fair as well as effective remedy against proscribed trading practices.

[The prepared statement follows:]

STATEMENT OF ROBERT H. MUNDHEIM, GENERAL COUNSEL, DEPARTMENT OF THE TREASURY

Mr. Chairman and members of this subcommittee, these are the first general Oversight Hearings since enactment of the 1974 Trade Act Amendments to the Antidumping Act. Those Amendments engrafted some important new provisions to the Act and I am delighted with the opportunity to discuss the impact of some of them with you. In addition, we now appear to be in the midst of a period of heightened interest in and use of the Antidumping Act. This period will test the efficacy of the Act as amended and highlight some of the problems in administering it.

Since January 1975, when the Amendments became effective, we have initiated 58 antidumping investigations involving $9.4 billion in trade. In 26 of those investigations, we made determinations of sales at less than fair value. The ITC found injury in 11 of these cases (three cases are still pending before the ITC). Sixteen of the 58 investigations are still pending before Treasury. However, in all but one case we have met the time limits for making determinations which were added by the 1974 amendments. In that one case, there was one less than one week delay.

Since substantial interest has recently focused on the use of the Antidumping Act to deal with alleged unfair trade practices relating to steel imports, I would like to bring you up to date on activity in that area. On March 8, 1977, Gilmore Steel Corporation filed a petition alleging the dumping of carbon plate steel from Japan. We initiated a formal investigation on March 30, and on September 30,

made a tentative determination of sales at less than fair value with dumping margins of 32 percent. We have one other case involving stainless steel pipe and tubing from Japan. A tentative determination in it will be forthcoming shortly.

On September 20, 1977, U.S. Steel filed, in effect, four petitions alleging dumping of a broad variety of Japanese steel products. Numerous other petitions have been filed with respect to steel since that date. Today, we are dealing with 16 petitions involving steel imports of $1.6 billion (1976) from nine countries.

These cases represent a substantial volume of activity, complicated allegations, and a large variety of products. The handling of these petitions within the time constraints imposed by the statute will test the administrative feasibility of a full scale implementation of the Act as amended.

STAFFING

Treasury administers the Antidumping Act through the Office of Tariff Affairs in the Office of the General Counsel and through Customs. Customs is responsible for the investigation of allegations of sales at less than fair value by gathering data (primarily through questionnaires submitted to foreign manufacturers), verifying it, analyzing it, applying established principles to the data and making recommended decisions to the General Counsel. Mr. Chasen will describe that process and its staffing for you in greater detail later.

The Office of Tariff Affairs is responsible for reviewing Customs recommendations and for considering with Customs changes in established procedures which would facilitate the administration of the Antidumping Act. This staff is relatively small, and in the supervisory echelons, relatively new. As General Counsel, I have the overall responsibility, and, as you know, have been in office since August 4. Mr. Ehrenhaft is the senior official in the Office of Tariff Affairs. He has been in his post only since September 12. Mr. Ehrenhaft is assisted by four professional staff members. Two lawyers in the General Counsel's office are also assigned to serve Tariff Affairs. Mr. Ehrenhaft and I are agreed that some staff must be added if the responsibilities for administering the Antidumping Act are to be successfully discharged. Active recruiting is taking place; in the meantime, two experienced staff members from other areas have been detailed to work in it on an interim basis.

COST OF PRODUCTION

Perhaps the most significant change in the 1974 Amendments, from an administrative point of view, was the addition of § 205(b), the Cost of Production provision. That provision directs us in calculating foreign market value (or "fair value") to disregard in certain circumstances sales in the home market or to third countries that have been made at prices at below the cost of production. Sales will be disregarded if:

(*a*) they have been made over an extended period of time, and in substantial quantities and;

(*b*) are not at prices which will permit recovery of all costs within a reasonable period of time in the normal course of trade.

A full scale cost of production petition thus requires Treasury to gather information about home market prices, prices in third countries, and cost of production.

Since 1975 we have conducted investigations in seven cases alleging sales below cost of production. We have made final determinations in five of these cases.

The steel cases have presented, and are likely to present, a variety of difficult problems not previously encountered. As you will recall, the Gilmore petition alleged sales below cost of production. Treasury sought cost of production information from each of the Japanese manufacturers involved in that case. The manufacturers refused to supply the requested information. They seemed to be concerned about making available what they considered to be highly sensitive information. Under the circumstances, the Tentative Decision in Gilmore had to resort to the best available information, which included translations of financial statements filed by the companies with the Japanese Ministry of Finance.

Recently, there have been indications that cost of production data may be made available in connection with our investigation of at least some of the steel antidumping petitions. Traditionally, information with respect to each foreign producer has been collected, initially by questionnaire. On-the-spot verification is then made by Customs officers. Often additional information will be required

when the data collected and verified has been analyzed. This process of gathering and verifying information about a wide variety of steel products will be time consuming. Since the information must be gathered in the first instance from the foreign producers, there will be limits to the degree to which one can speed up the investigation process.

Application of the cost of production provisions also raises many difficult problems. For example, under the statute the steel petitions require us to make a determination of the cost of production of numerous sub categories—by grade, size, degree of finishing, and other factors—subsumed within product categories such as plate, sheet, etc. Most important, steel manufacturers produce a wide variety of steel products and non-steel products as well. Cost of production calculations thus require a reasonable allocation of fixed and other costs in highly integrated companies for the specific product in question. Further, although the Antidumping Act contemplates that there may properly be some sales at below cost, it imposes the test that such prices "permit recovery of all costs within a reasonable period of time in the normal course of trade." However, the statute provides no guidance as to the length of a reasonable period of time. In the tentative determination in Gilmore, we took the position that a reasonable time was a business cycle in the steel industry and looked at a three-year period.

I raise these questions to illustrate the added complexity, both as to legal questions and investigation, which the cost of production provisions add. Since this area is new, it will be getting its first extended test in connection with 11 steel cases (all maturing for decision at roughly the same time). It is appropriate to remember that the time constraints added by the 1974 Amendments give us little flexibility in dealing with unexpected developments late in the process.

EFFECTIVENESS OF THE ACT

Questions have been raised about the effectiveness of the Antidumping Act. You will recall that in the *Gilmore* case, we made a tentative determination of sales at less than fair value and found weighted average margins of 32 percent. Since appraisement has been withheld, I understand that virtually no further imports of Japanese imports of carbon steel plate have entered the United States. This has occurred because the dumping margins announced in the tentative determination were based upon comparisons between the appropriate measure of "fair value" and U.S. sales prices during the period October 1976 through March 1977. Since that time, Japanese sales prices have tended to firm up. Nevertheless, the importers are required to post bond on the current value of their imports equal to the weighted average margins of dumping determined in the earlier period.

In relating this result in Gilmore, I am not suggesting that it be read as a complete answer to the question of effectiveness; but it is one measure.

ASSESSMENT OF DUTIES

Finally, I would like to touch on another area about which this Committee has shown concern: our procedures for the assessment of dumping duties under § 202 of the Act. That provision requires the assessment of a special dumping duty in an amount equal to the difference between the price of the U.S. and "foreign market value." Thus, the statute requires us to ascertain specific dumping margins in connection with each entry of merchandise subject to a dumping finding.

To properly fulfill our responsibilities under this provision, we must, for example in a case where the cost of production is at issue, perform the complicated investigation which I have earlier described. It is clear that the character of the information required necessitates a significant passage of time between the actual entry of the merchandise which is to be appraised and the availability of the information on which we must make a judgment of fair value.

Even in a case not involving § 205(b), some elements related to cost typically are collected, verified and analyzed. The merchandise exported to the U.S. is most often not identical to that sold in the home market or to an appropriate third country, and adjustments for those differences must normally be made. In addition, we are also interested in identifying the circumstances of sale (e.g., marketing cost) for which allowances should normally be made. These types of information are usually not available on a current basis.

I know that this Committee has a particular interest in the delay which has been experienced in appraising and liquidating Japanese television sets subject

to a 1971 dumping finding. Although I think it is not appropriate to discuss the particulars of a case which we have under active consideration, I believe I could make a comment which may be helpful and proper.

It is not possible for me satisfactorily to justify to you the more than five-year backlog of entries in this case. There are, however, two special problems which have contributed significantly to the unusual delay.

First, we faced an unprecedented number of complex requests for adjustments in circumstances of sale, i.e., differences in the marketing experience in the two countries, and for adjustments occasioned by physical differences between the television sets sold in the U.S. and Japan. A great deal of time has been consumed in trying to determine the appropriateness of many of these adjustments, particularly in gathering, verifying, and analyzing the vast amount of data submitted.

Second, early this year information came to light concerning possible fraudulent evasion of the dumping finding by use of a "double pricing" system on imports—i.e., the use of illegal rebates. This investigation is a continuing one and has further inhibited our ability to proceed with dumping appraisements.

We fully appreciate and share your concern over this delay. Treasury is actively considering an approach to this problem which I hope will permit us to bring liquidations much more up-to-date.

Commissioner Chasen will shortly explain to you the steps Customs has taken and is taking to improve our ability to keep dumping appraisements generally up-to-date.

Our experiences in administering the Antidumping Act have suggested a number of possible improvements that we have already implemented. We have initiated a procedure under which the petitions received are made available for public inspection and comment even before we publish a formal notice of investigation. We are paying more attention to explaining in our published notices the reasoning behind our decisions. We have published guidelines governing ex-parte communications.

We revised the cost-of-production questionnaires being distributed to the Japanese producers in the U.S. Steel case. The questionnaires now seek average cost and price data for each of the products in each year of the three-year period we believe must be reviewed and seek aggregated data on certain types of costs for the "period of investigation" (there 13 months). To help us formulate our inquiries properly and to anlyze the data, we are considering retaining on an ad hoc basis, consultants from other branches of Government and from the private sector.

Although Mr. Ehrenhaft and I are relatively new in administering the Antidumping Act, we are convinced that a full scale Treasury analysis of the Act to see what changes are needed is desirable and such a review will be undertaken. Any review (and any suggested changes) must recognize that the Antidumping Act and its administration have a substantial impact on our trade relations. Mr. Ehrenhaft has just returned from the annual meeting of the GATT Antidumping Committee in Geneva at which he was pressed by both the Japanese and European representatives concerning certain of our practices. Repeated questions were asked about the thoroughness of our injury investigations—particularly before withholding of appraisement is ordered—and the propriety of using "constructed value" criteria—particularly the mandatory 8% profit markup in an industry such as steel which apparently has rarely experienced such profit margins in any country—in determining the "fair value" of our imports. In our focus on making the Antidumping Act an effective remedy against unfair trade practices, we do not want to make it a tool for improperly shutting off foreign trade and inviting retaliation.

I do want to reiterate the commitment I made to you last September to administer the Antidumping Act firmly and fairly. The present period of intense use of the Antidumping Act will undoubtedly highlight the problems of doing that job successfully. As we face this period of testing, it is reassuring to know this Committee's continuing interest in making the Act a fair as well as effective remedy against proscribed trading practices.

Mr. VANIK. Thank you very much. I think we will move directly to the statement of Mr. Chasen. Will you follow the same policy and summarize your statement. We have it before us. Your entire statement will be admitted in the record as submitted. If you can summarize, it will leave more time for questions.

We are happy to hear from you.

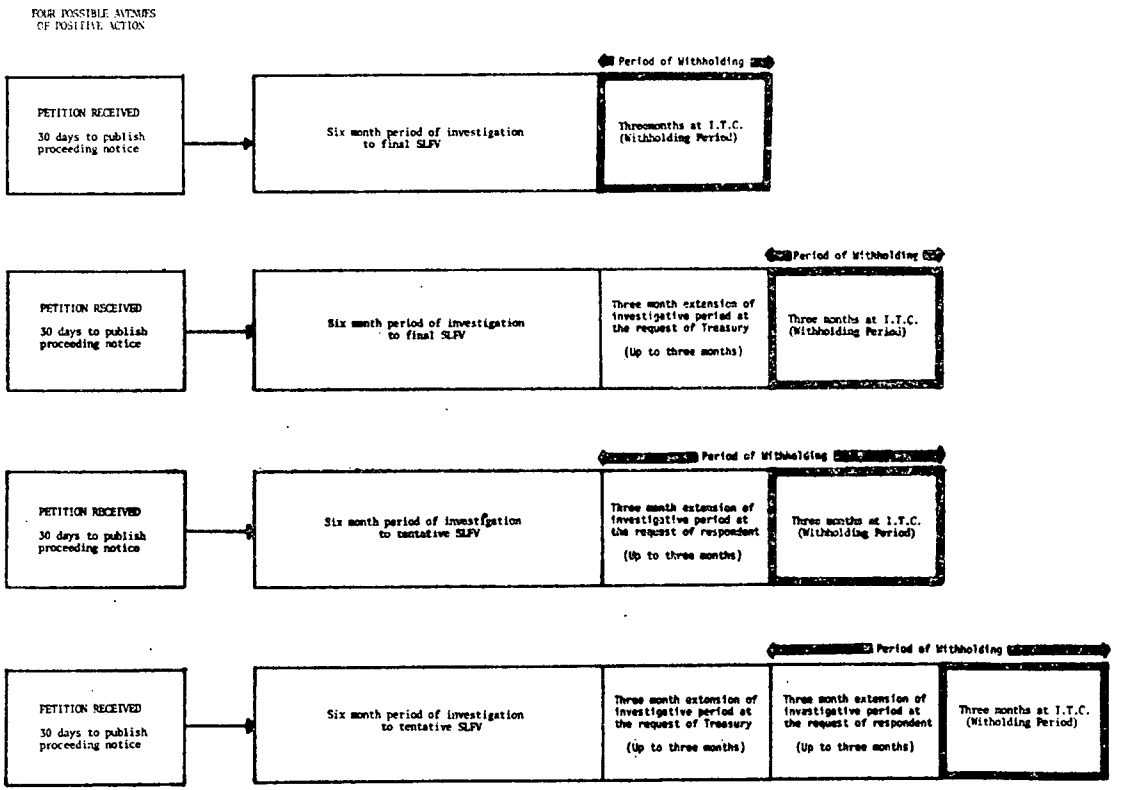
Mr. CHASEN. Thank you, Mr. Chairman and distinguished Members of Congress. Like Mr. Mundheim, I am also rather new, starting on July 15; and I have Bob Dickerson, who has 26 years with Customs; and Jack O'Loughlin, who also has many years. So, between the three of us, we will try to answer your questions.

My purpose is to describe to you Customs' role in the enforcement of antidumping statutes and to alert you to some of the problems we have experienced as well as how we plan to solve them. It may be helpful if I first briefly outline the procedures that we follow in dumping cases which are not terminated prior to a finding of dumping.

To compress time, we have put this procedure on a chart, and I think the important fact here is that by virtue of the statute and regulations, the time parameters within which we work range from 10 to 16 months, depending on how the parties exercise their rights to have extensions granted.

[The chart referred to follows:]

ANTIDUMPING TIME PARAMETERS



Mr. CHASEN. But, basically, after the petition is received, there is a 6-month period of investigation, and if there is a finding of dumping, the data is forwarded to the International Trade Commission where they have 3 months to decide whether or not injury has been done to a party or parties.

Mr. VANIK. Sixteen months plus six more is possibly 22, as an outside period.

Mr. CHASEN. That is the very outside.

Mr. VANIK. We would like to have your chart and have it reproduced for our study and perusal.

Mr. CHASEN. After the finding is reached that sales have been made at less than fair value, the assessment process——

Mr. VANIK. Do you have prepreparation of fair value on any items? Do you have any tables before you, so you get some triggered notice of something coming in at very low prices? I mean, suppose some steel should appear on the docks at $10 a ton tomorrow. Does that immediately raise some attention in your office that something is not right here or something is wrong about that? It is a ridiculous price for an item and extraordinarily low. Don't you have any base data that would trigger an immediate attention by your office to something coming in at very low prices?

Suppose there is a color TV that comes in at $100. Wouldn't that excite your interest? What would you do about it? Would you wait 22 months to let 3 million or 5 million or 30 million sets into the country?

Mr. MUNDHEIM. Mr. Chairman, are you talking—if you are talking about television sets——

Mr. VANIK. I am talking about any item. Let's forget television sets.

Mr. MUNDHEIM. The distinction is whether or not there has been a dumping finding outstanding with respect to the product.

Mr. VANIK. No dumping; this is a subject in which there is no dumping. Let's call it—I don't know what. I can't think of anything there may not be any dumping on.

Let's assume there is a commodity that comes in that hasn't been the subject of any concern or dumping complaints. It comes in at very low prices. Let's call it an electric cleaver. So, it comes in at a very low price. It comes in at $1. It generally is a $50 item or whatever. Would there be any way that the customs officials would immediately be triggered to say, look, this is coming in at extraordinarily low prices?

Mr. DICKERSON. There would not be.

Mr. VANIK. In other words, you don't maintain a list of commodities or objects with any reference as to what the market price or what the import price might be?

Mr. DICKERSON. We do, but only for duty assessment purposes. If the article were unusually high or unusually low, to the extent that we thought this would effect the amount of duty, we would initiate an investigation to determine what the proper duty would be, but only for assessment of duty under the Tariff Act. We would not, even though I think we have the authority unilaterally to initiate dumping cases.

Mr. VANIK. My point is, you are at the point of entry. You are out of any warning system. You are out there all over America at ports

of entry to provide possibly an early warning of dumping coming into the country.

Now, what would trigger your attention for action? What would it take to alert you, to have you pass on that information to whomever it concerns, to whomever should have the information here in Washington that there is an item or commodity coming in at extraordinarily low prices. You have no mechanism for that?

Mr. DICKERSON. We have no mechanism for that.

Mr. VANIK. That brings me to the case of British Steel on the docks of San Francisco. Is Treasury currently looking into that?

Mr. MUNDHEIM. We would not be investigating that unless a complaint against British Steel had been initiated. I just don't know offhand, Mr. Chairman, whether or not one of those 16 petitions allege dumping with respect to British Steel.

Mr. VANIK. I am not talking about those 16 past petitions. I am talking about recently, has there been any effort or inquiry by your Department on the subject of British steel on the docks of San Francisco at prices below Japanese steel, CIF? Is that a matter of investigation?

Mr. MUNDHEIM. Mr. Chairman, in response to a question that you asked me at the last hearing, and I supplied you with some information——

Mr. VANIK. I just want to know, is it under inquiry or investigation?

Mr. MUNDHEIM. For antidumping purposes?

Mr. VANIK. For any purpose.

Mr. MUNDHEIM. Not specifically, no, unless, and this is the only caveat I want to make, unless one of the petitions, and as I said, we have had a lot filed within the last 40 days, specifically alleges dumping by British Steel.

Mr. VANIK. The reason I asked this question is on November 3, I raised this question and I made a speech on the floor, and I inserted into the Record and Customs' figures on British steel, and I made the statement that it looked to me like it was a prima facie case of dumping. Apparently nothing has happened. Am I correct in believing that Treasury has not looked into that as a result of the speech I made last week?

[The speech referred to follows:]

[From the Congressional Record, Nov. 3, 1977]

BRITISH DUMPING STEEL AND UNEMPLOYMENT ON AMERICA

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Ohio (Mr. VANIK) is recognized for 5 minutes.

Mr. VANIK. Mr. Speaker, during the September 20 hearing of the Ways and Means Subcommittee on Trade, I requested the General Counsel of the Treasury Department to provide me with a sampling of the prices of British and Japanese steel imports being landed on the United States west coast and elsewhere.

I have just received a response from Treasury which indicates that generally the British are slightly underselling the Japanese.

I do not believe that there is a steel expert anywhere in the world who believes that the British can produce steel cheaper than the Japanese. U.S. Government studies have concluded that the Japanese are the world's most efficient steel producers and are aggressive in their pricing policies. There is no way that the old, inefficient, overstaffed British Steel Corporation can, consistent with fair trade practices, undersell the Japanese. The only way that the British Steel Corporation has managed to survive at all is through gross state subsi-

dies. Recently there was sworn testimony before the U.S. Internationl Trade Commission that—

"During the 1975–1976 fiscal year, British Steel posted a shocking deficit of over $541 million. The deficit for the 1976–1977 fiscal year was considerably less, i.e., only $156 million. However. . . . according to the company's Chairman, Sir Charles Vilhers, . . . the deficit for the current fiscal year could approach the 'dreadful' sum of $500 million again."

In other words, in 3 years the British Government spent $1.2 billion propping up British Steel. Needless to say, American corporations could never survive with operating losses of this magnitude.

The data indicates that the British are selling plate steel at prices starting slightly below the Japanese prices—yet this is the same type of steel that on September 30 the Treasury Department found the Japanese to be selling in our markets at margins equal to 32 percent below Japanese home market prices. In other words, the price of Japanese plate should be one-third higher.

If this is the situation with Japanese imports, it is a prima facie case that the price of British steel should be at least one-third higher—especially when one considers that the British are shipping all the way to the west coast. If these data prove correct, the British are subsidizing their steel mills and dumping their production in the United States to maintain full employment in England. They are thereby creating unemployment in the United States and depression in the Mahoning Valley.

This practice must be investigated and if proved out, stopped immediately. As chairman of the Subcommittee on Trade of the Committee on Ways and Means, I am announcing oversight hearings on the administration of the anti-dumping laws.

GENERAL COUNSEL OF THE TREASURY,
Washington, D.C., October 20, 1977.

HON. CHARLES VANIK,
Chairman, Subcommittee on Trade, Committee on Ways and Means, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: At the recent hearings before the Trade Subcommittee of the House Ways and Means Committee concerning the steel industry, you inquired about prices of steel imported from Japan and the United Kingdom. I am enclosing a table containing information obtained from the Customs Service concerning the July/August 1977 quotations of steel prices on the West Coast of the United States from those two countries.

Sincerely,

ROBERT H. MUNDHEIM.

Type of steel	British terms of sale	Range of British prices (hundred-weight)	Japanese terms of sale	Range of Japanese prices (hundred-weight)
1. Cold rolled steel sheet	Duty paid, U.S. dock	$14.50–$17.85	Duty paid, U.S. dock	$16.60–$19.60
2. Hot rolled steel sheet	Duty paid, U.S. pier	12.80– 13.50	Warehouse, Philadelphia	12.80– 13.30
3. Steel plate, ASTM, A–36	Cif., duty paid	12.45– 14.20	Cif., duty paid	12.95– 14.10
4. (a) Wide flange shapes [1]	C. & E., Houston	10.38– 11.13		
(b) Beams [2]			Cif., Houston	11.32– 11.32
5. Galvanized sheet, ASTM 527: [2]				
(a) Group 1	Cif., duty paid	18.74– 19.90	Cif., duty paid	19.40– 20.80
(b) Group 2	do	20.75– 22.10	do	20.80– 22.00
(c) Group 3	do	19.45– 20.75	do	20.90– 21.55

[1] 4 (a) and (b) are believed to be comparable products.
[2] 5 (a) Group 1, 0.17×24 coil through 0.023×36× coil; (b) Group 2, 0.014×36× coil through 0.019×48×120; (c) Group 3, 0.017×36×96 through 0.024×36×96.

Mr. VANIK. I want to measure the effectiveness of speeches.

Mr. MUNDHEIM. If you file a petition, we will give you some help, and that will be even more effective in initiating our investigations. As to whether or not we want to initiate——

Mr. VANIK. I am not going to do anyone else's work.

Mr. FRENZEL. I want to ask a short question. As I understand it, Customs has the authority to investigate on its own motion when it notices that low priced articles are entering the United States as partly, I guess, so it wouldn't be losing Customs revenue. Do I understand from Mr. Chasen that you are not carrying out this responsibility? You indicated that you weren't looking into things in response to the Chairman's question.

Mr. CHASEN. I thought Mr. Dickerson's response was that we attempt to establish the value of the merchandise and to assess the appropriate duty on that merchandise.

Mr. FRENZEL. So, you are monitoring on a daily basis?

Mr. CHASEN. That is the job of Customs.

Mr. FRENZEL. Just for tariff purposes and not for dumping purposes?

Mr. CHASEN. That is correct. A dumping procedure has to start, as I understand it, from the filing of a petition.

Mr. FRENZEL. Doesn't your checking for tariff purposes give you information that would also call to your attention the fact that there might be dumping, that prices may be at great variance?

Mr. MUNDHEIM. Congressman, it wouldn't give you the other side of the picture. In order to make a dumping finding, you have to know what the home market prices are and to relate those to the U.S. prices. Also, you have to have allegations of injury to a domestic industry.

I want to come back——

Mr. VANIK. That isn't the issue we are asking you. We are discussing the system. Isn't there a regulation in Customs——

Mr. FRENZEL. Mr. Chairman, in title 19, paragraph 150.25, it says that "if any District Director of Customs has any information or any grounds or any suspicions that any merchandise is being or likely to be imported at a purchase price less than the fair market value," and so on, "he will communicate that belief or suspicion promptly to the Commission."

It tells how they do it. It seems to me that maybe you aren't doing that.

Mr. MUNDHEIM. In order to make that determination, in the statutory provisions you read, you have to know the home market price and the Customs officers wouldn't know that.

Mr. FRENZEL. Well, he communicates his suspicion to the Commissioner and the Commissioner can inquire about the fair market price.

Mr. Chairman, I don't want to belabor the point——

Mr. VANIK. It is very important. Isn't the statute amplified by a regulation that mandates the Customs Service to alert the Director, the Commissioner of Customs, immediately if there is a suspicion of dumping. Do you or do you not have that kind of regulation?

Mr. O'LOUGHLIN. The present regulation directs a Customs field officer to be alert to a situation where he may consider that there are sales at less than fair value. But, if I can go back in history, and this involves my own personal recollection, any case initiated within the Customs Service never went anywhere.

Mr. VANIK. Let me ask this, how many "alert notices" have left Customs on the basis of this regulation? How many reports were made on this issue?

Mr. O'LOUGHLIN. I would say in recent years none.
Mr. VANIK. Have any ever been made?
Mr. O'LOUGHLIN. Yes, and those that were——
Mr. VANIK. When, historically, were they made?
Mr. O'LOUGHLIN. The last would have been in the middle sixties.
Mr. VANIK. And since then the regulation was operative but there was no case determined by any Director Customs or anyone in the Customs office or any Customs officer to alert anyone with reference to a possible dumping violation?
Mr. O'LOUGHLIN. I am afraid I can't give you an accurate answer. But, if you are referring to——
Mr. VANIK. We understand. For all practical purposes it has not been done.
Mr. O'LOUGHLIN. No, and in those cases where it was the cases were not processed to any great degree because of the lack of interest even where we found sales at less than fair value.
Mr. VANIK. I didn't want to interrupt you, Mr. Chasen, but we have an important point cleared up. That points out one of the weaknesses in our system in that there is no early warning system of dumping which was mandated by law and which was mandated by your regulations. Quite obviously, prior to your time that has not been functioning as an effective early warning system.
You may proceed.
Mr. CHASEN. Within the last 5 years a total of 100 dumping petitions have been accepted out of an estimated total of 200 filed. Twenty-four of these are active cases, in varying stages of the investigation. A full-time staff of 16 professional and 8 clerical employees is assigned to perform the wide variety of tasks associated with dumping cases. They are assisted as necessary during the investigation phases by Customs attachés in foreign countries and special agents throughout the United States, some of whom have special training or experience in dumping matters. Attorneys from our Office of Regulations and Rulings provide legal advice as well.
The one area in which we have had problems is in the timely assessment of duties after a dumping finding has been made. The task of gathering information can be overwhelming.
I come to Customs from the private sector and I can tell you, there is nothing more privately guarded in the private sector than the cost of production. As I look as objectively as I can at the task imposed upon Customs, I can speak from lengthy experience, and it is a very substantial task with the tools we have available to us to obtain cost of production information from business entities in foreign countries.
To expedite the information-gathering stage of the assessment process, we are enforcing a cutoff date for the receipt of responses to questionnaires. The cutoff period is usually 30 days, with a 30-day extension available where special circumstances dictate. If responses are not received within the allotted time, master lists will be prepared based on the best information available from other sources.
We have also established 11 new positions permanently assigned to antidumping activities. We can also have task forces as required.

We have no way of knowing when we ask for information from these foreign business entities what volume of information they will give us. They may send a shipload of information to us. So, we have to adjust our staffing, make an educated estimate, and then act as required.

It should be stressed, however, that delays in the assessment of dumping duties subsequent to a finding of dumping cannot be remedied merely by adding people. This is not one of those situations like I used to see in the aerospace business where if you had a problem you just added people.

Delays relate primarily to the complexities of assessment itself, to the quantity of information which must be obtained, verified and analyzed and the variety of factors that we are required by law to take into account in assessing dumping duties.

I have made my statement. I have compressed it as much as I could.

I would like to say that we in Customs recognize that the Antidumping Act of 1921, as amended by the Trade Act of 1974, is a vital part of U.S. trade policy, and we will do our utmost to carry out the enforcement responsibilities that have been delegated to us.

[The prepared statement follows:]

STATEMENT OF ROBERT E. CHASEN, COMMISSIONER OF CUSTOMS

Mr. Chairman, I appreciate the opportunity to appear today before this Committee, along with Mr. Mundheim, and discuss Customs efforts to perform its responsibilities under the Antidumping Act of 1921, as amended by the Trade Act of 1974. Mr. Mundheim has already discussed with you many of the key issues that concern the Treasury Department in this area. My purpose is to describe to you Customs role in the enforcement of antidumping statutes and to alert you to some of the problems we have experienced as well as how we plan to solve them.

Before proceeding, it may be helpful if I first briefly outline the procedures that we follow in dumping cases which are not terminated prior to a finding of dumping. As you know, dumping cases are initiated when a petition is filed with Customs alleging that a particular kind of merchandise is being sold in the United States at less than fair value and an industry within the United States is being injured or likely to be injured by such sales. The information in the petition is checked against readily available data for adequacy and accuracy, and a determination is made within 30 days as to whether a full-scale investigation is warranted. If that decision is in the affirmative, questionnaires are prepared seeking information on the relevant prices of the merchandise in the home market and the prices at which such merchandise is sold for export to the United States; differing business patterns and practices in the two markets; and any adjustments that should be made in the prices because of such differences.

A Customs representative located abroad and Customs investigators in the United States present these questionnaires to foreign manufacturers or exporters and their U.S. subsidiaries and assist them where necessary in compiling the requested information. The information is then verified from whatever sources are available, including but not limited to the books and records of the manufacturers, exporters or their subsidiaries. When the fact gathering process is completed, the data are analyzed for completeness and the appropriateness of the various adjustments claimed by the parties under investigation.

In order to determine whether there are sales at less than fair value, comparisons are made between the foreign market value, or other value determined in accordance with statutory guidelines, and the price at which the merchandise is sold to the United States. These comparisons are made on at least 60 percent of all sales of the particular goods to the United States made during the period of comparison—normally a 6-month period.

On the basis of these comparisons, a recommendation is made to the Secretary of the Treasury by the Customs Service and interested parties are notified of the preliminary results of the comparisons. A tentative decision is then published within 6 months from the initiation of the full-scale investigation (or 9 months if the case is exceptionally complex). If sales at less than fair value are found, the tentative decision will consist of publication of a notice of withholding of appraisement; entries will not be processed; and appropriate bonds will be posted by importers. Additional information may be submitted and oral presentations made by concerned parties. Further comparisons will be made if necessary as a result of new information.

A final determination is made within 3 months of the publication of the tentative decision, and the case is referred to the International Trade Commission for an injury determination. If the International Trade Commission subsequently concludes, within 3 months after referral from the Treasury Department, that injury to U.S. industry is occurring or likely to occur, a finding of dumping is published and the assessment process begins.

The assessment process closely resembles the full-scale investigation of a dumping petition, except that it is conducted in much greater depth. In the initial fair value investigation, regulations allow for the use of weighted average prices and adjustments for circumstances of sale. But during the assessment phase the law requires that we use specific prices on specific dates and specific adjustment factors rather than weighted averages. In addition, the investigation conducted at this point involves a time period subsequent to that used in the fair value investigation, and therefore does not reduce or simplify our efforts at this point in the process.

Following the same procedure used in the fair value investigation, questionnaires are delivered to manufacturers, exporters, and U.S. subsidiaries; responses are reviewed, and verified, generally on a spot-check basis unless unusual circumstances merit full verification. The data are fully analyzed and the appropriate price or value to be assigned to the merchandise for the purpose of assessing dumping duties is calculated. A master list of values and instruction sheet are subsequently prepared for transmittal to import specialists in the field where price comparisons are performed on all of the affected merchandise exported to the United States from the country with regard to which a finding of dumping has been made. With this data they proceed to appraise merchandise, and assess dumping duties.

This provides you with a broad, albeit somewhat simplistic, overview of the entire process, from receipt of the petition to the assessment of dumping duties. However, it should be kept in mind that the collection of dumping duties is neither the sole purpose nor the only possible result of a finding of dumping. The intent of the Antidumping Act is to remedy certain unfair trading practices. A businessman faced with ADA charges or findings can respond by: (1) a cessation of sales to the United States; (2) an increase in the price of the product to the United States; or (3) a decrease in the home market price so long as this does not result in sales below the cost of production.

Within the last 5 years a total of 100 dumping petitions have been accepted out of an estimated total of 200 filed; 24 of these are active cases, in varying stages of investigation. A full-time staff of 16 professional and 8 clerical employees is assigned to perform the wide variety of tasks associated with dumping cases. They are assisted as necessary during the investigation phases by Customs attaches in foreign countries and special agents throughout the United States, some of whom have special training or experience in dumping matters. Attorneys from our Office of Regulations and Rulings provide legal advice as well.

Primary emphasis is of course placed on the investigation of new dumping petitions because statutory deadlines established in the Trade Act of 1974 must be met. We are pleased to be able to report that in every instance since the enactment of those amendments, the necessary work has been accomplished within the allotted time.

If there is one area, however, in which Customs has had problems, it is in the timely assessment of duties after a dumping finding has been made. Let me illustrate for you the kind of difficulties we encounter. The task of gathering the information needed to determine whether or not dumping duties are to be assessed can be overwhelming. Literally dozens of exporters and manufacturers can become involved, all submitting voluminous amounts of data, supplementing

it with additional information, and submitting corrections when they discover their original responses have been erroneous. In one recent case the fair value investigation involved the five major manufacturers of a commodity in a country who accounted for 60 percent of the total value of exports during the period under investigation. However, after the dumping finding was published, the subsequent investigation for assessment purposes resulted in the investigation of approximately 75 other manufacturers because the findings applied to all manufacturers of the commodity from the country in question.

What would appear to be the simplest and fastest portion of the assessment process thus becomes a mammoth undertaking which could lead to further complications as the case progresses. The merchandise subject to a finding of dumping can be produced in a wide variety of models or styles under various circumstances which could require adjustments in pricing data to take into account differences in cost of production. The information collected from manufacturers and exporters must cover each of these unique factors, which also, of course contribute significantly to the awesome burden of verifying and analyzing the data. Moreover, obtaining this information can require a period of years rather than weeks or months, when initial submissions are inadequate. Under these circumstances, the preparation of master lists and appraisement instruction sheets for the use of import specialists proceed slowly.

We should emphasize that these extraordinary situations do not arise often, but when they do occur, tremendous strain is placed on our ability to expeditiously formulate values to be used in the assessment of appropriate dumping duties. We have, however, identified certain problem areas where administrative steps can be taken to overcome some of these deficiencies.

To expedite the information-gathering stage of the assessment process, we are enforcing a cutoff date for the receipt of responses to questionnaires. The cutoff period is usually 30 days, with a 30-day extension available where special circumstances dictate. If responses are not received within the allotted time, master lists will be prepared based on the best information available from other sources. It is anticipated that this will be a sufficient sanction to insure speedy responses since information from other sources may well lead to the assessment of higher dumping duties on particular products.

Master list preparation and the issuance of appraisement instructions to the field has been a problem in part because it is a slow process by its very nature, and in part because in the past it has often taken a back seat to the investigation of new dumping petitions. To date, the preparation of master lists has been an entirely manual operation. To speed the process, we have recently designed and tested a program which would automate a large portion of this function using already available computer capacity. While this step will not alter methods of information gathering or data analysis, it will significantly reduce the time required for data transcription, calculations, typing and distribution. Additionally, in May we detailed 15 people to update some 400 master lists that were in various stages of development.

We have also established in our Office of Operations 11 new positions permanently assigned to antidumping activities. These positions will raise the workforce to a total of 23 professional and 10 clerical employees. In addition we have identified a cadre of 45 investigators with either strong dumping or business backgrounds who are available for dumping investigations. Moreover, in cases involving complex technical/legal issues, task forces composed of Customs officials with appropriate expertise will be formed. It is anticipated that the bringing together of knowledgeable personnel under one team leader will result in the more efficient processing of dumping cases.

It should be stressed, however, that delays in the assessment of dumping duties subsequent to a finding of dumping, to the extent that they occur, cannot be remedied merely by adding people. As I have stated, delays relate primarily to the complexities of assessment itself, the quantity of information which must be obtained, verified and analyzed and the variety of factors that we are required by law to take into account in assessing dumping duties.

We expect that the positive administrative measures we have initiated will go far toward reducing unnecessary delays in processing cases once a finding of dumping has been made. We recognize that the Antidumping Act of 1921, as amended by the Trade Act of 1974, is a vital part of U.S. trade policy, and we will do our utmost to carry out the enforcement responsibilities that have been delegated to the Customs Service.

Mr. VANIK. All right. Now I just want to ask a couple of brief questions.

I want to go back to the statement that was made on November 3 concerning the British steel and the European docks.

That shows generally British steel coming in about $2 a hundredweight less than the Japanese steel.

Now, if there is a concern about Japanese dumping in the United States and British steel comes in at $40 a ton less what do we do with that information? Under your system, what do we do with that informattion? Does that look like a normal business transaction?

Mr. FRENZEL. It is their high productivity.

Mr. MUNDHEIM. I might say to you that I understand the National Steel petition has alleged some dumping of certain types of steel from——

Mr. VANIK. I am not talking about that. I am talking about deliveries in the last several weeks. Nobody has filed a case—the National Steel is only against cold rolled sheet. What about the other four categories in your letter to me?

What I am trying to drive at here is we have got all this concern in America about steel and this steel appears at $40 a ton less than one of the world's most efficient producers, Japan. Does this information just get lost in the system?

Your office, Mr. Chasen, was very cooperative. Are we going to write something in the law to have that kind of information furnished regularly? Perhaps we ought to publish it in the Congressional Record. We have a lot of other things we are publishing—some not very relevant—and it seems to me this is vital economic information on which some kind of action ought to be moving because of the present economic circumstances. There is no system for that, I understand, and if we don't pay attention to the regulation of Customs——

Mr. MUNDHEIM. At present, we do have the authority—we want to be clear—we do have the authority, under the law——

Mr. VANIK. I know you have.

Mr. MUNDHEIM [continuing]. To initiate a petition. We have not done so in the past.

Mr. VANIK. I am going to say this. I know it is very difficult for me, Mr. Mundheim, to be critical of you or Mr. Chasen. You are inheriting and assuming a task which your predecessors apparently failed to do, which ought to have been done, and we can't hold you chargeable, but we are certainly hoping that prospective policies might be moving to tighten up this procedure.

I have just a couple more questions of you.

In connection with the statement in the paper today, Mr. Mundheim, does Treasury actually have the authority to impose temporary duties?

Mr. MUNDHEIM. You mean do we have authority to impose dumping duties without making an investigation?

Mr. VANIK. The paper said today you are going to impose temporary duties or you are contemplating that.

Mr. MUNDHEIM. I am not familiar with that statement. I don't really know what temporary duties mean. We may not withhold the Treasury——

Mr. VANIK. Provisional duties before injury is found.

Mr. MUNDHEIM. Well, we do have the authority to withhold the appraisement—as I told you——

Mr. VANIK. The question is: Do you have the authority to impose provisional duties?

Mr. MUNDHEIM. In one sense, that is what we do whenever we withhold the appraisement, when we make a determination. That is what has happened in the *Gilmore* case. I don't know whether the newspaper account has some other notion in mind, but in the sense of provisional duties, you know, when we have made a tentative determination of dumping and have found margins, the reason that the importer has got to post a bond is really to take account of those possible duties.

Now, if we never make an ultimate finding of sales of less than fair value or if, as frequently happens, the ITC makes no finding of injury, then no dumping duties will be charged with respect to those entries, so that the statute now contemplates what I think you are talking about when you refer to provisional duties.

Mr. VANIK. Well, Mr. Mundheim, if I can pursue this——

Mr. STEIGER. You have the Washington Post story that talks about the Solomon plan.

Mr. VANIK. I had it at 7 o'clock this morning. [Laughter.]

I walked out to the street; and they throw my newspaper at the house.

Mr. MUNDHEIM. I am not so lucky.

Mr. STEIGER. I am sure you must be a part of that group that is dealing with this; are you not?

Mr. MUNDHEIM. Well, I am not a part of Mr. Solomon's task force. Mr. Solomon, as you know, is Under Secretary of the Treasury, but I do know something about the Solomon task force; yes.

Mr. STEIGER. Then the question is: Do you, in fact, have the power in the law to hasten the process by computing a so-called reference price for imported steel and then, in effect, assess duties immediately on any product found selling here below that price?

Mr. MUNDHEIM. Well, I think those are really—let me try to separate those. If we are talking about a reference price system and asking whether or not we would have authority to initiate an investigation with respect to people who sell below that reference price system, which would be a monitoring effort, really, of the sort that the chairman is talking about.

I have indicated that we do have the authority to do that.

Now, the question of whether or not we have the authority to simply withhold appraisement, because I think that would be a technical term, for the duties, without making any specific finding, that I think raises some problems.

Mr. STEIGER. Can I ask either you or Mr. Chasen, or both, given the fact that in both statements and in the information that the subcommittee has been able to gather, it is clear that one of the problems that you have in any dumping investigation is the cost of production and the necessary information required to make that judgment.

How easily do you think it will be for you to find the reference price by, according to the Post story, taking the production and transporta-

tion costs of "the most efficient producer" in each block of exporting nations and treating, it as a minimum price for all products in that line?

Mr. MUNDHEIM. Mr. Congressman, I would not read that story as giving an accurate account of where this plan will ultimately, if at all, end up.

I think we have got—the Under Secretary is trying out some thoughts. I think he is some distance away from having a complete program, and we are certainly some distance away from working out the details on any program, let alone one along the lines described in the Washington Post, so that I think you are right, that in implementing any system, we have got a lot of difficult detail work to do. I don't think we are there yet.

Mr. STEIGER. I appreciate very much your comment on that. If the proposal went ahead in the form it was presented in the paper, is it fair to sum up your characterization by saying that there would be a really serious problem in terms of being able to determine the so-called reference price?

Mr. MUNDHEIM. You have to excuse me. I have not studied—I haven't looked at that article. I have not studied it to see—I must say when I looked at it, I thought there were things in there that surprised me. So to talk about this particular plan that was developed by Mr. Pine, I am not—as developed by Mr. Pine or explained by Mr. Pine—that would seem to me it would raise some problems.

Mr. VANIK. You are the one who is charged with administering this whole program, aren't you?

Mr. MUNDHEIM. Not charged with administering Mr. Pine's program. [Laughter.]

Mr. VANIK. You are in the same department with Mr. Solomon.

Mr. MUNDHEIM. Mr. Pine is the man who wrote the article.

Mr. VANIK. I know he is the reporter who wrote the article. He is not in your department yet. I want to ask you this: If you do have that reference price authority in the manner that you have described it, do you have the authority to do this only for steel while precluding other items, or is it a general power?

Mr. MUNDHEIM. Well, you come back to the fact, Mr. Chairman, that you have pressed us, and I think quite rightly, in saying we have the authority to initiate investigations, and you have said, "Why haven't you put in a monitoring system?"

There are lots of reasons why one may not have a complete monitoring system to trigger an investigation under the dumping act.

It may be that in some sectors one thinks that a monitoring system, and ultimate Treasury initiation of an investigation, is appropriate, an appropriate, if you will, use of the resources of the Treasury.

Mr. VANIK. My point is, if it applies to steel, it applies to anything, doesn't it?

There is nothing that singles out the power to do it in steel and not in any other commodities or products?

And then my final question on this area: Are such actions, even on a temporary basis, consistent with our obligations under international antidumping laws and the GATT?

Would you rather reserve on that answer and get me Treasury's official response to that?

Mr. MUNDHEIM. I would be glad to reserve it.

One of my problems is—again, can we talk about Mr. Pine's plan?

Mr. VANIK. Let's forget it is Mr. Pine's plan. It's been suggested. Now, if it's been suggested by just anyone, supposing one of our committee members suggested it, do you think it would be legal? Do you think it's possible?

Would it apply to all other commodities?

And the fourth question would be: How would it affect our obligations under GATT?

Mr. MUNDHEIM. I have indicated to you I do think it is permissible for us to initiate dumping——

Mr. VANIK. Reference price——

Mr. MUNDHEIM [continuing]. Initiate dumping, under the circumstances we think are appropriate.

Mr. VANIK. We all know that. The law says that. That is settled. We aren't talking about that.

What we are talking about is the imposition of a reference price system in the early process.

Mr. MUNDHEIM. Well, if you look at the reference price system as one that simply says there are some benchmarks, if you will, that would trigger an antidumping investigation under the statute and under all the statutory provisions, taking them all into account, I think that is appropriate.

Mr. VANIK. Well, I think that what we ought to do is give you an opportunity to get a full response to that, because I understand your problem in responding to the newspaper statement that came to our attention and got us very, very much concerned.

We want to be advised on how these projected cures are going to work.

Mr. STEIGER. Would my chairman yield?

Mr. VANIK. Certainly.

Mr. STEIGER. Mr. Mundheim, let me not be subtle; there is a great interest on the part of the members of this subcommitttee in whatever plans are made by the administration to respond to the steel situation, and clearly to other industries as well.

Might you be willing to take back the message to Mr. Tony Solomon and to the Secretary of the Treasury that we would like very much to sit down with them at some appropriate point in the not-too-distant future to talk with them about what their plans are? Is that fair?

Mr. MUNDHEIM. I certainly will carry that message back.

Mr. STEIGER. I would appreciate your carrying that back.

Let me, if I can, ask one further question, and then Bill Frenzel and Jim Jones may have others.

Given the chairman's statement of November 3, your response that if he filed a petition it would be more effective than if he had made a speech, and given the fact that, under the law, you have the right to file petitions and to begin the investigation, will you do so based on the facts in the British steel situation?

Mr. MUNDHEIM. You mean on the facts—you mean would we now commit to you to initiate an antidumping investigation with respect

to British steel on the basis of the information conveyed today at the hearing? No, sir.

Mr. VANIK. You have answered the question.

Mr. Jones?

Mr. JONES. My question, Mr. Chairman, is a follow-on to that.

You have established the fact you have the authority to initiate antidumping. Someone else has established the fact you have not done it in recent times. Why haven't you?

Mr. MUNDHEIM. Well, I think that when we initiate an antidumping investigation, one, we have a very substantial commitment of our own resources; two, we have an immediate impact on the importers, and it is an expensive procedure for those people.

We, therefore, have conditionally said we will initiate a—or look at a petition, and only act when someone who is affected, and that someone can be anybody who is affected, who submits to us a petition alleging facts, showing sales at less than fair value, and showing facts indicating injury to a domestic industry.

And those seem to us to be the earnest that we have got a matter which is sufficiently serious that we ought to commit those resources.

We are presently investigating petitions involving $1.6 billion worth of steel imports. That is roughly half of all steeel imports.

I think the people who are affected in that area recognize it and have come in with petitions and we have acted, and acted within our statutory time frames, to deal with those.

Mr. JONES. I want to understand what the present policy is. Even though you have the authority to initiate anti-dumping action, your policy is that you will not do so because of a number of reasons, and the only way that you will do it is if someone comes in and petitions. Is that the current policy?

Mr. MUNDHEIM. That is the current policy—our investigations are triggered by a petition alleging the fact of injury as well as sales at less than fair value. And even if we may know there are possibly some sales of less than fair value, we have also got to have the causal connection to injury drawn.

Mr. JONES. The law clearly gives you the authority. But the policy is that you are not going to exercise that authority on your own?

Mr. MUNDHEIM. Not in that way. Otherwise we—I don't know how we would do it.

Mr. VANIK. Mr. Rostenkowski?

Mr. ROSTENKOWSKI. Mr. Mundheim, current procedures allow for investigations to be had upon the filing of specific information and then only upon a preliminary determination that dumping is likely.

The initiation of the investigation must be published in the Federal Register. In view of these safeguards and in view of the often very protracted nature of the investigation, and the investigations themselves, are manufacturers adequately protected within the intent of the act during the period of investigation?

I understand regulations allow for 9 months before releasing the finding.

Mr. MUNDHEIM. Typically, sir, we will act and make a tentative determination within 6 months, as we did in the *Gilmore* case, at which time we will withhold appraisement.

Mr. ROSTENKOWSKI. In how many other investigations have you released the determination in less than 9 months.

Mr. MUNDHEIM. I think we have had 58 since January 1975, and in 26 of those we have made determinations of sales at less than fair value. And I would say that a great bulk of those would have been made within the 6 months.

I will be glad, if you would like, to furnish you a breakdown between the 6 months and those where we have used the extended period. I don't have that here.

Mr. ROSTENKOWSKI. I am concerned, Mr. Mundheim, about the fact that, if somebody wants to dump, they can, and in the case I am familiar with, dump within that framework of either 9 months or 10 months or even 6 months. Would the elimination of the antidumping procedure notice and the replacement of publication of the withholding of appraisement notice at the time the Secretary determines that an investigation is warranted eliminate the ability of foreign manufacturers to enter goods free of dumping duties during the investigation?

Mr. MUNDHEIM. You mean if we had—I am not sure I fully understand how you mean.

You mean if the act were rewritten to require withholding of appraisement when we initiated the investigation?

Mr. ROSTENKOWSKI. Yes.

Mr. MUNDHEIM. Yes. That would obviously—I mean, one, you have some problems in determining what the margins ought to be, at which bonds ought to be posted at that point, and you would also, in essence, be penalizing a foreign importer before you knew that he was dumping.

Let me just go back again and say to you that although we initiated 58 dumping investigations, we did not find dumping in all of them, and even in those where we found sales at less than fair value, the ITC, in the majority of those cases, found no injury, so there would be no dumping.

To move the process up to the beginning, when we really hadn't gotten our facts together, seemed to me to raise some very serious policy issues which Congress would want to consider before making such an amendment.

Mr. ROSTENKOWSKI. Mr. Mundheim, with respect to the recent investigation of dumping of carbon steelplates, was there not so much time between the initiation of the investigation of and the publication of preliminary determination that the Japanese maufacturers were able to curtail their orders?

Mr. MUNDHEIM. You are quite right that once we withheld appraisement, that the Japanese exporters have virtually stopped sending any further carbon steelplate into the United States.

Mr. ROSTENKOWSKI. Do you have any idea how much steel was entered in the interim?

Mr. MUNDHEIM. No, sir, I do not.

Mr. ROSTENKOWSKI. What steps are taken, Mr. Mundheim, to protect U.S. manufacturers and the revenues of the United States, that is to insure that the offending parties will be penalized according to the provisions under the act?

Mr. MUNDHEIM. You mean, once we have made a dumping determination?

Mr. ROSTENKOWSKI. Yes.

Mr. MUNDHEIM. Well, the primary—if any carbon steelplate is entered into the United States, the Japanese—excuse me —the importer of that Japanese steel must post bond with a value of 32 percent of the value of what is being entered. That is the basic surety that when margins are ultimately assessed, that they will be paid.

Mr. ROSTENKOWSKI. Commissioner Chasen, in your opinion, do the bonding fees represent in any way a barrier to discourage foreign manufacturers from dumping?

Mr. CHASEN. I do not believe so.

Mr. VANIK. Will the gentleman yield at that point?

I have to raise the issue because of the antidumping cases and the Japanese TV and steel bar cases. Entries have not been liquidated in years.

Secretary Blumenthal told us, on June 16 of this year, that, he states the delay in liquidating the entries of Japanese TV's is partially due to Treasury's inability to evaluate the exporters' requested price adjustments, as you have earlier indicated, due to the complexity of cost of the production figures, the reluctance of Japanese to provide the data.

Now, I would like to have inserted, as further response to Mr. Rostenkowski's question. I would like you to determine what is the value of the televisions that entered the United States since 1973 when the entries were last liquidated. How much does this represent in normal entry duties and how much of the amount has been collected to date?

Can you estimate the total amount of uncollected entry duties arising from unliquidated entries, subject to dumping fines?

What is the average length of time between an entry and a liquidation for imports subject to a dumping finding?

If there is a significant period of time between entry and liquidation, doesn't this adversely affect Government revenues, while, at the same time present the importers with a windfall float?

Finally, I would like to submit for your consideration an example of the cost to the importer of the payment of entry and dumping duties, compared with the cost of bonds.

They can make an awful lot of money. According to my figures that staff has prepared, imports in televisions in 1976 from Japan were $572,736,000, over a half a billion. The entry duties owing at 5 percent were $28,636,800.

The cost of the bond to cover these entries at $1.25 per 1,000 was $35,796, and the bond covering the dumping duties, the required face amount, was $51,546,000 and the cost of that bond, at $5, would be $257,731 and at $10, would be $515,462; that at a maximum cost of $551,258 importers defer a minimum payment of $28,636,800. Now, I don't know how they can borrow money at more attractive terms anywhere.

I am submitting this as the very case in point to demonstrate the way the system does not work, to demonstrate its failure, and to demonstrate the duty system, both regular and for dumping, can be obviated by the bond procedure which permits the duty to be deferred. Payments deferred are like justice deferred they are lost.

Now, I don't know if these will ever be recovered.

I would like to submit that to both Mr. Chasen and to you, Mr. Mundheim, for your examination, because it proves definitely that in response to the questions Mr. Rostenkowski has raised, there is insufficient effort to liquidate these things and get off the bond system.

This has gone on since 1973.

[For response see p. 191.]

Mr. VANIK. In the meanwhile, the television industry is moving, principally out of Mr. Rostenkowski's area, and we are very much concerned about that.

Now, I would say this, Mr. Rostenkowski. If these duties had been properly collected and liquidated, some of the industry that's in America might still be in place.

Mr. MUNDHEIM. Well, I can't disagree with you. As I indicated to you in my prepared statement, there is no satisfactory way to explain that situation.

Just one comment, Mr. Chairman. One of the problems in any system is, if somebody fraudulently tells—gives you fraudulent information.

Mr. VANIK. There is no fraud in this. I don't know there's any fraud.

Mr. MUNDHEIM. That's one of the problems here, I think. That's the so-called double-pricing system, which may well involve the use of illegal rebates, and that, in that sense, lowers what seems to be the applicable duty.

Now, that, of course, undermines any kind of bonding system.

On the other hand, if you discover there is fraud and you can prove it, there are very substantial penalties which are far in excess of the duties.

I don't want you to read me as saying things are perfect, but I——

Mr. VANIK. That doesn't exempt you from collecting the normal duties.

What you are doing in your fraud search is fine, but that doesn't give you any justification for relaxation. You are not collecting the normal duties that should be imposed by the tariff laws and by the antidumping laws.

Mr. MUNDHEIM. I don't want to disagree with you. As I said, I hope we are going to come up with an approach that will make you a little happier with us.

Mr. VANIK. I know you are suffering a loss in your industry, Mr. Rostenkowski. Is there any hope they would change their minds?

Mr. ROSTENKOWSKI. I was told 6 years ago, that given entry to the markets in Japan, there wouldn't have been any reason in the world for our domestic manufacturers to look elsewhere to put up factories. But I am afraid that these pleas fell on deaf ears.

I would ask another question. Have you any reason to believe that Japanese TV manufacturers, or importers of their TV receivers submitted incorrect or false prices to the U.S. customs service upon the entry of the merchandise or in the TV dumping case?

I am asking Mr. Chasen that question.

Mr. CHASEN. Sir, that is part of an ongoing investigation, and I would rather decline to comment at this time.

Mr. ROSTENKOWSKI. All right. I will look forward to the conclusion of that investigation then for your answers.

Have you liquidated any TV imports involved in the TV dumping case in reliance on any submissions you now believe may have been false or incorrect?

Mr. CHASEN. I would have to give you the same answer.

Mr. ROSTENKOWSKI. In the TV dumping case, has the Service attempted to examine, under oath, any owner, importer, consignee, or other person on any material matter relating to the investigation?

Mr. CHASEN. I think we have to give you the same answer, sir.

Mr. ROSTENKOWSKI. Thank you, Mr. Chairman.

Mr. VANIK. Thank you very much.

Before, I proceed to Mr. Jones, I want to read something that we have prepared here.

"We, the undersigned members of the Trade Subcommittee, hereby petition the Treasury Department to investigate the dumping in the United States of British steel, which is injuring or likely to injure the American steel industry.

"The other essential information on pages 12306 and 12307 of the Congressional Record, 11-3-77," signed by "Charles Vanik, Mr. Steiger, Mr. Frenzel, Mr. Jones and Mr. Rostenkowski."

Now, there may be some things technically wrong about this petition, but we expect you to bring it up in good form. That is what the Government is about. You have to help us.

We help people borrow money from the Government and help people who ask for loans and grants, so we expect you to get this in good form.

Mr. MUNDHEIM. We have helped people file their petitions and we will be glad to help you.

Mr. VANIK. We don't want to hear any more about that action until you make your investigation. Take that to your Department and mark it filed as of today, and we will deliver it to you now.

Now, we will proceed to Mr. Jones.

Mr. JONES. Mr. Chairman, I have two or three areas I want to develop for the record.

First of all, Mr. Chasen, with regard to the staffing in the customs service, I believe, in your statement, you mentioned there were about 13 in the technical division handling the antidumping matters. Is that correct?

Mr. CHASEN. Sixteen, Congressman.

Mr. JONES. Now, how many did you have——

Mr. CHASEN. That is professional people.

Mr. JONES. How does this compare to 1972?

Mr. CHASEN. In 1972, we had 38 professionals.

Mr. JONES. So, you had a substantial decrease.

Now, these 16 professionals you have today also do things other than antidumping matters.

They work on countervailing duty matters and other things. Is that correct?

Mr. CHASEN. Yes. Dumping and countervailing, but they——

Mr. JONES. So, you have had a straight professional staff in the technical branch—it is less than 50 percent of what it was 5 years ago, and you have substantially more antidumping activity on your hands than you did at that time.

Mr. CHASEN. I would like to mention, to answer your question, sir, in looking back, the amount of dumping petitions that were filed in each year. In 1972, there were 32 filed.

In 1973, that went down to 21, and in 1974, down to 11.

In checking the reason for this phenomenon, I am advised that the—since fewer petitions were filed, we just assigned fewer people to the work, and it wasn't until—in 1976, it was 13.

There was a rise in 1975, which was attributed to the automobile investigation.

But it wasn't until 1977 that this sudden increase occurred, and to handle this we have basically used the task force procedure to bring in teams to augment the permanent staff.

Mr. JONES. Let me say that after listening to the testimony of the witnesses so far, I gather there are two recommendations of ways to improve the situation. One is to increase the staffing, but the caveat to the increasing of the staff, I believe you said, is that increased staff is not going to help the situation particularly.

Mr. CHASEN. That is in the assessment area, not in the investigation.

Mr. JONES. The other recommendation was a 30-day time period for the questionnaires to be answered and returned.

Now, unless I missed something, those are the only two recommendations I heard this morning. So, let's concentrate on the staffing.

I didn't hear when you are going to beef it up and by how much. Are you going to get it back to the 1971 level? In what period of time? Exactly what are you going to do?

Mr. DICKERSON. Let me add something here. The figures are a little misleading when we talk about the permanent staff in the technical branch, in that we did reduce that in 1973, concurrent with the reduction in the number of petitions that were filed.

But we have retained those individuals in headquarters to be—to be available as needed, as the workload increased.

What we do when we have an increase in workload, for example, a large dumping action, such as what we are dealing with in the steel situation now, is bring together two or three task forces from other divisions of qualified people.

So, currently where we have 16 professionals in the technical branch, we also have detailed, full time, 15 additional technical people that are working on the assessment process; and in addition to that, we have formed a special task force of professionals, which is approximately 10 people, attorneys, investigators and skilled import specialists, so currently in the technical branch, we have approximately. oh, in excess of 40 people assigned full time to work on this.

We will put more in there if it is required.

We are, in addition to the 40 we have there, we have recently developed an automated program which will assist us in the assessment process.

And the operation of this program will require 11 persons. I believe it is six professionals and five clerical people and we are in the process of recruiting those.

Mr. JONES. Is that a computer operation?

Mr. DICKERSON. Yes.

Mr. JONES. I understand from Mr. Chasen's testimony that one of your slowdown problems is being handled by manual operation, as much as it can.

Yet in 1971 the then Commissioner of Customs received, as I understand it, the amount of money he requested to put in a computer operation to automate it. He said that this was necessary to speed up the processing of the antidumping and countervailing duty complaint cases.

Congress responded to that request, but it is 6 years, and we still don't seem to have much automation.

Mr. DICKERSON. I am afraid I am not familiar with that particular request. Mr. Jones. The particular program that we are putting into effect now was developed in the last 6 months.

Mr. JONES. What I was quoting from is dated March 8, 1971. Miles Ambrose is testifying before the Appropriations Committee:

> We are now in the process of implementing our program to speed up the processing of antidumping and countervailing duty complaint cases. Funds to expedite this program were recently provided in 1971 supplemental appropriations, speed-up was accomplished for two basic methods.
>
> First, substantial expansion for the number of personnel assigned, and the function is a result of the supplemental. Second, a radical reorganization of the procedures and methods for conducting an investigation.

and it goes on and on.

That was March 8, 1971. Here we are 6½ years later and it looks like we are beginning to automate. It is not a very good record.

Why does it take 6½ years to follow through on what you say you are going to do, what the then Commissioner said Customs is going to do?

Mr. DICKERSON. I am not aware of, Mr. Jones, what Mr. Ambrose was referring to 6½ years ago. I think he probably was referring to the development of our AMPS system. We are all——

Mr. JONES. He specifically refers to antidumping and countervailing duty complaint cases.

Mr. DICKERSON. I only know that the system we are talking about now we have developed within the last 6 months.

Mr. JONES. When is it going to be fully operational?

Mr. DICKERSON. This system will be operational by the end of this year.

Mr. JONES. Now, just one question and I will relinquish my time. One final area of interest.

With regard to the cost of production, Mr. Chasen, you mentioned that these are among the most closely guarded business secrets, and so forth, and it is extremely difficult to get information. What are your recommendations? How do we get it? What should we do?

Mr. CHASEN. I don't really have what I think is an adequate answer. I don't even know if you could get that information in the United States, except perhaps through some other part of the Treasury Department.

But we have examined, among many alternatives, including the use of impartial consultants who might be utilized strategically to establish a confidence level among the foreign business entities. I will personally participate in any outside suggestions with anyone who

has them to make, because, frankly, I don't know how you get this information.

Mr. JONES. As I understand it, Canada and Australia are the two countries that get into the antidumping activities perhaps as much as the United States. What do they do in this area of cost of production?

Do they have similar statutory requirements, or have you compared our law to theirs to see if there are any recommendations to be made to this committee? If you don't know, just provide it for the record?

[For response see p. 194.]

Mr. CHASEN. I would like to have the opportunity to check that answer because we are not certain.

Mr. JONES. The 1974 Trade Act calls for constructed value.

How frequently has this provision been used since the 1974 Trade Act, do you know? If you don't know that, provide it for the record, if you will. If you do know it, I would like to have the answer to that as well as the particular problems you have encountered in administering this and what suggestions you would have to the record.

Mr. DICKERSON. I don't have that information before me. Our experience has been an escalating use of constructed value.

Mr. MUNDHEIM. Since 1975, we conducted investigations in seven cases alleging sales below the cost of production, and we have made final determinations in five of those.

Mr. JONES. Are you having any particular problems with it for which you would recommend changes?

Mr. MUNDHEIM. Well, in the—as indicated in the *Gilmore* case, one case where we did not get the cost of production information, that didn't deter us from being able to go forward.

We just had to go and use the best available information, and we did have information there from which we could construct a cost of production and determine——

Mr. JONES. You had no procedures you would like to undertake to change——

Mr. MUNDHEIM. I don't think at this moment, but we are going to be getting into those cases.

The cases involving really the tough questions, I think, that are coming down the pike in the steel petitions that we have. As we begin to get into them, I suspect we will find where the problems are and that is when we are going to come back and say that we need help. We will be back.

Mr. JONES. One final question. At the present time, the minimum 8-percent profit factor is added in, as I understand it. Isn't that substantially above what the foreign steel companies have obtained as far as profit level is concerned, and if it is, do you recommend lowering the minimum profit level?

Mr. MUNDHEIM. That is what we are told and that is one of the questions as to which Mr. Enrenhaft was severely tested in Geneva.

I am not ready and we are not ready to come in with a suggestion for lowering that level, but that is—as I said, we want to make a full-scale review at Treasury, which we are planning to undertake, of the act, and that may well be an area that we will be back to. That is a problem we have to consider.

Mr. JONES. In what timeframe, for my own edification?

Mr. MUNDHEIM. Will we come back?

Mr. JONES. Yes.

Mr. MUNDHEIM. If you won't press me on a specific date, I would be very happy, but I am not going to——

Mr. VANIK. I will press you on a specific date, because I think there will be legislation coming down the pike when we get back here in January, so there is a real pressure point for action. We better have all these things pretty much resolved and in place before the second session of this Congress begins, or we are simply going to be here dealing with legislation instead of an administrative proposal, which I would think would be far more preferable. There is a very, very restrictive time limit for action, a very urgent limitation that the administration should be aware of.

Mr. JONES. Thank you, Mr. Chairman.

Mr. VANIK. Thank you very much. I just wanted to get one question in to follow Mr. Jones' question.

In the Gilmore case, you say there is practically no more carbon slate steel coming in, but as I have been able to look at the figures, there isn't much of any carbon plate steel, there isn't much increase of any other Japanese steel coming in for the time being, so what you claim as one of the achievements of the *Gilmore* case, cuts across the whole spectrum of primary steel?

I understand that hasn't changed the nature of the imports that are coming in on types of fabricated steel and so forth, but the effect is clear on primary carbon steel.

I have one question before we leave this whole business. Serious questions are raised by the larger number of cases, which have recently been brought against foreign steel producers.

As I said, I understand the carbon plate steel from Japan is almost impossible to obtain. Also, full utilization of the dumping procedures against European steel producers, and our case is now on file with you, could result, in effect, in a complete embargo on steel imports. Since such drastic responses are likely to strain our relationships with our major trading partners, I would like to know, in your opinion, Mr. Mundheim, what the possibility is of a political decision being made to discontinue these cases.

Mr. MUNDHEIM. Well, as you know, we have talked about the Solomon task force, which is looking at an overall solution to the problem faced by the steel industry.

Obviously, if that task force comes up with proposals that meet those problems, one would hope that there is room within the law to deal with the cases with respect to which petitions have been filed in accordance with that solution, but it would have to be within the law.

Mr. VANIK. Well, all I can say is that I am very much concerned about the political process in which a dumping case is declared to be and the really political decisions, the high chamber decisions in the offices of the Exchequer here, who can decide when they can be suspended or not liquidated.

It is one of our problems with the whole technique, and it is one of the bases of our inquiry, whether or not this can really be an effective tool, because there is so much arbitrary discretion that remains in Treasury officials to decide when and against whom dumping should

be imposed. There is also an equal amount of tremendous political discretion which can decide when the whole idea might be dropped, because it might be found to be offensive to some of our trading partners.

That is the trouble with the procedure. It is an on-and-off political thing instead of something that is certain.

What our trading partners need, what our American industry needs is certainty, and we want to remove the power of political decisions from the process.

Now, that is going to be—and I speak for our subcommittee—the direction that we want to take: To take the political uncertainties out of the decisionmaking process, so it is made by a rule of law, under established formats, and so that our trading policies become something that everybody can understand and live with, but we certainly want it to be uniform and operate under a legal process rather than the highly volatile climate in which we now get certain actions out of Treasury.

We suspect actions happen because of political pressures, and we suspect that when the pressure is relaxed, political pressures from abroad may cause other things to happen. We don't want trade to be a political process. We want it to be a normal, fair, economic process. I see so much unfairness in all of this antidumping procedure that I don't really have the enthusiasm that is shared by others as to its capability to deal with the long-range problem of imports, particularly the steel problem and others that have been very difficult in our economy.

Now, at this point, I would like to recognize Mr. Frenzel.

Mr. FRENZEL. I would like to ask a question of Mr. Chasen. You indicate that you make comparisons on 60 percent of the sales in the United States. Why do you examine that large number of them?

Is that a statutory requirement or one that——

Mr. O'LOUGHLIN. That is variable factor depending on the circumstances of the sale. It would be a timewaster if you had to go to all the facts——

Mr. FRENZEL. Mr. Mundheim, can you explain the procedure by which you determine the fair value of an imported item?

How do you get that home market price?

Is it wholly from the material presented to you by the manufacturer?

Mr. MUNDHEIM. Well, basically, you start out with some invoices with respect to transactions. You have got to then strip from that certain circumstances of the sale to get back to the factory price.

You get that information, I think, primarily, from the foreign exporter, but you also—Customs people verify that information.

It is an on-the-spot verification.

Mr. FRENZEL. They can't verify sales in the manufacturer's home territory.

What do you do when——

Mr. MUNDHEIM. That is not quite true. They have people who go to Japan and make verifications there.

Mr. FRENZEL. By buying a machine?

Mr. MUNDHEIM. Well, I think that there are ways to accomplish that.

Mr. FRENZEL. I am sure there are.

Mr. MUNDHEIM. Maybe sometimes you do buy a machine.

Mr. DICKERSON. I don't think we buy machines, but we have Customs attachés in a large number of foreign countries. It is possible to obtain data on home market sales from purchasers in the home market.

Mr. FRENZEL. So, when you have a case like the Gilmore steel case where you were not given information by the manufacturer——

Mr. MUNDHEIM. They gave us information with respect to home market prices. They did not give us information with respect to cost of production.

Mr. FRENZEL. I see.

So, do you proceed then on the basis of making estimates where the companies do not give you information?

Mr. MUNDHEIM. In the cost-of-production aspect of the *Gilmore* case, we had to use other data, other data, obviously, than what was provided by the company in order to arrive at the cost of production figure.

Mr. FRENZEL. How long do you give a company to report to you when you are asking for information?

Mr. MUNDHEIM. I believe we send the questionnaire, asking them to respond in 30 days; they sometimes later ask for a 2-week extension from Customs. That is sometimes granted. Sometimes they ask for an additional 2-week extension from us, and that is rarely granted.

Mr. FRENZEL. The law requires dumping duties that are assessed on the basis of present prices comparisons. Therefore, you have to revise your pricing information.

How often do you revise that information that is submitted by exporters? Does that vary?

Mr. MUNDHEIM. I will let the Customs people, since they prepare the master lists, which are used in comparing entries of merchandise, respond.

Mr. O'LOUGHLIN. The master list comparisons are drawn up on the basis of the circumstances of the sales of the commodity, and it is done on a commodity-by-commodity basis; and every time a different price results either in the home market or the sale to the United States, we calculate it at a different dumping margin.

So, it could be on a daily basis, a weekly basis, or quarterly or anything else, depending on the volatility of the market involved.

Mr. FRENZEL. Well, again, you are asking for information to make these provisions. How much time usually elapses between your request for information and the time that you get it and then are able to make the revision?

Mr. O'LOUGHLIN. The master list processing is in effect a mini-dumping case. We try to follow the same time limits.

In other words, we have recently imposed a 30-day response time on those cases when there are findings of dumping where we are producing master lists.

We have not been successful in getting the responses back, in all cases, and in those instances, we have tried to proceed on the basis of the best information available.

Mr. FRENZEL. I understand that you have some difficulty in making price comparisons because exporters request adjustments based on dif-

ferences in circumstances of sale and quantities and costs of production that are available.

Do you have the requests for those adjustments frequently?

Mr. O'LOUGHLIN. They are in almost 100 percent of the cases.

Mr. FRENZEL. Are they frequent enough to cause disruption in your liquidation processing?

Mr. O'LOUGHLIN. We have to—it necessarily slows us down, in that we have to consider each adjustment a particular foreign producer will submit to us for consideration.

How many of them we——

Mr. FRENZEL. Do you have any limits on the number of requests and the manner in which they are made so you simply don't get inundated with them?

Mr. O'LOUGHLIN. We ask them for the price information, together with any differences in the market conditions, and at that time they submit the price information, they will give us all that apply between the two markets or in fact between the commodity sold in the home market as opposed to the commodity sold to the United States.

We have to either consider and accept or reject each one of these adjustments that are requested.

Some of them we can reject out of hand because we know, in our experience, they don't exist or they are not worthy of——

Mr. FRENZEL. But they can make these requests for adjustment in any number?

Mr. O'LOUGHLIN. Yes, sir, they can.

Mr. FRENZEL. Wouldn't it be better to put some limits on them?

Mr. O'LOUGHLIN. As a matter of equity here, if there are differences in the product, if there are differences in the circumstances of sale, under the statute, they have to be recognized.

Mr. FRENZEL. You have given me the information about the 30-day request and the extension and so on.

Is that a regulation, or is that simply a tradition in your department?

Mr. O'LOUGHLIN. As far as the master list goes, it is a recent policy in an effort to speed up our master list production.

Mr. FRENZEL. I think it is no secret to you that the committee is not satisfied with the speed with which you handle these cases, and we are looking for ways to make it easier or at least to speed up the actual process of your work. We are not sure of the best ways to do it, but I think you can tell from our questioning what we are trying to do here.

If changes in the law are necessary, I guess we are willing to do that, but we hope that there will be some changes in your internal processes that will rather reduce the time frame in which these decisions are made.

Thank you, Mr. Chairman.

Mr. VANIK. Mr. Rostenkowski?

Mr. ROSTENKOWSKI. Thank you, Mr. Chairman.

I have several questions about the current procedures which allow Customs brokers, who must be bonded, to make entries under their own bond. They thus become the importer of record and are personally liable for the duties which may be due on the merchandise. Presumably where an antidumping bond would be taken, the broker would secure the bond in his own name.

In your opinion, Mr. Chasen, are the brokers sufficiently strong financially to bear this risk?

Mr. DICKERSON. What normally happens is that a broker may enter and be responsible for the importation under his own name, but he may also enter under the actual importer's name, only in most instances where we are involved in these large amounts of potential dumping duties, brokers are not liable.

They have entered in the actual importer's name. That we feel like in most instances is where the broker is the importer of record. The bonding requirement that we have is sufficient to protect our interests for anything.

Mr. ROSTENKOWSKI. What has been your experience with brokers that have become insolvent?

Mr. DICKERSON. We have had, in recent years, several instances, a couple I think in the Chicago area, where brokers have, because of bad business practices, become insolvent.

I am not sure we lost money in these situations, but in most instances we have been able to protect our interests. It is not widespread that brokers become insolvent.

Mr. ROSTENKOWSKI. Mr. Mundheim, the House recently passed the Customs Procedure Reform Act, which contains a revision of section 592 to the Tariff Act of 1930. This is the so-called penalty and fraud provision.

Does the proposed revision have any effect on our conduct or the outcome of the TV dumping cases?

Mr. MUNDHEIM. I don't think it will, sir.

Mr. ROSTENKOWSKI. Beg pardon?

Mr. MUNDHEIM. I do not think it will.

Mr. ROSTENKOWSKI. You do not think it will.

Mr. MUNDHEIM. No; I don't think it will.

Mr. VANIK. Thank you very much, gentlemen.

I want to say, Mr. Chasen, I thank you and your staff. You are really not the ones who should be responding to these complaints. Both you and Mr. Mundheim aren't the ones who should be responding to the past policies or the nonpolicies or problems of Treasury and Customs, but we hope that you, Mr. Chasen, can innovate an early warning system on an unfair trade assault. You have all the tools. You have got everything that you need to have. If there is something you don't have, let us know what it is, but you have all the tools to put in place an early warning system in trade matters. We just can't wait until the damage is done. It is too late then. We have got to tune up our procedures so they work quickly. I think that would minimize a loss to other countries that are exporting to this country, and would maximize the advantage to our own industries. I think it is a very important tool.

Mr. Mundheim, we hope you will be able, through your leadership, be able to establish a firm, uniform, understandable system of expediting antidumping procedures.

We want to work on the same side, but I want to say this, that the whole system is on probation, and if it doesn't come up with viable solutions, it is very possible that Congress might dump the whole procedure in exchange for something else, because we are going to have

to reckon with that kind of problem when Congress reconvenes in its second session in January. So, you have this little time.

I hope the best resources of your offices, both your offices, will be put to work and come up with a really viable, understandable, efficient, fair system of dealing with this problem.

Thank you very much.

Mr. VANIK. I would like to announce our next two witnesses will be Mr. Cornell and Mr. Hatton, of the Trade Commission.

We expect to finish these witnesses and resume this afternoon at 1:30, at which time we expect to conclude the business that has been set for this day.

Mr. Cornell? You have with you Bruce Hatton, and Mr. Cornell, we prefer you summarize your statement so we can move the questions as rapidly as possible.

Mr. Cornell, your entire statement will be admitted into the record as submitted, and we will be very happy to hear from you now.

STATEMENT OF ROBERT CORNELL, ACTING DIRECTOR OF OPERATIONS, U.S. INTERNATIONAL TRADE COMMISSION, ACCOMPANIED BY BRUCE HATTON, DIRECTOR, OFFICE OF CONGRESSIONAL LIAISON; MICHAEL STEIN, DEPUTY GENERAL COUNSEL OF THE COMMISSION; AND HAROLD BRANT, LEGAL SERVICES DIVISION

Mr. HATTON. I am Bruce Hatton, Director of Congressional Liaison for the United States International Trade Commission.

As representatives of the Commission, we welcome this opportunity to testify before the subcommittee on the important subject of antidumping.

Chairman Minchew, along with other members of the Commission, is conducting hearings in the Far West in the matter of imported steel, and has asked we provide whatever assistance we can to the committee in its inquiry into the antidumping statutes.

Mr. Robert Cornell, on my right, the Acting Director of Operations and the Commission's principal liaison officer with the Department of the Treasury on antidumping matters, briefly will review the USITC roles in the antidumping provisions.

Also present is Mr. Michael Stein on the end, who is the Deputy General Counsel of the Commission; and next to me is Mr. Harold Brant, from the Legal Services Division of the Commission.

We have other members here, in case you have questions of the staff of a technical nature.

We do have antidumping cases before us and it would be inappropriate for us to discuss those. Otherwise, we would welcome any questions you might have for us or the Commission.

Mr. VANIK. How many cases do you have pending now? That is a matter of public record.

Mr. HATTON. Two or three cases now.

Mr. VANIK. Two or three. You have no problem allocating all that work.

Mr. HATTON. We are expecting a few more.

Mr. VANIK. All right. We will be happy to hear from you, Mr. Cornell.

Mr. CORNELL. Thank you, very much. As you know, the present form of the Antidumping Act of 1921 provides for a rather clear separation of responsibility between the Department of the Treasury and the USITC with respect to antidumping actions.

In a nutshell, Treasury's job is to perform the first task of the investigation, namely, finding the existence of sales at less than fair value, and, then, the case passes to the USITC, where the responsibility extends to an investigation of the injury question; that is, the Commission must determine whether a U.S. industry is suffering or is threatened with injury—or is prevented from being established—by reason of the less than fair value sales.

The USITC's determination is communicated to the Executive within 3 months of its original receipt of the case from Treasury, and if the determination is in the affirmative, dumping duties are levied.

This process can be shortcircuited under certain conditions that were specified in an amendment to the Antidumping Act provided by the Trade Act of 1974.

If, in the early stages of its work, Treasury determines that there is substantial doubt of injury, they can quickly pass the case to us for a 30-day inquiry, whose purpose is to determnie whether there is any reasonable indication of such an injury, and if we find there is such an indication, the case goes back to Treasury for the normal treatment; if we find there isn't, the case terminates right there.

Now, this division of responsibilities, I think I should point out, involves a pretty close working relationship between Treasury people and the staff of the USITC, and especially in recent months, with the new staff on board at Treasury, we are finding that very close and very beneficial working relationships are developing quite rapidly.

I think I could say there are not many problems we have, from our point of view, that cannot be solved with a rather quick telephone call to Mr. Ehrenhaft.

In many respects, the injury investigations that the Commission conducts are not unlike, at least in terms of procedures, the kind of investigations we conduct under section 201 of the Trade Act.

This especially refers to their scope, because we attempt, in each antidumping injury investigation, to do a complete "conditions of competition" study with public hearings and very extensive investigative and research efforts by the Commission.

In its work, the Commission studies the domestic industry involved. It collects and analyzes information on its capacity, output, sales, inventories, profitability, employment, investment performance, and R. & D. outlays.

Another line of research covers the importers. Aside from the standard objective of discovering the impact of imports on U.S. markets, this part of the investigation also explores the relationships between the LTFV imports, found by Treasury, and other imports of the same products to which the LTFV sales determination does not apply.

Then, finally, a third major line of investigation focuses on the U.S. markets in which both the domestically produced and the imported products are competing.

Here, the USITC studies the distribution chains of both domestic producers and importers, collecting and analyzing information on purchases, sales, inventories, and prices at key points in the distribution chain up to and including the retail level.

Now, despite the obvious similarities which apply to most, if not all, antidumping cases, the Commission deliberately tries not to take a sort of formula approach in its injury investigations.

Instead, it attempts to consider each case as a real de novo effort, with its own special situations that may have a bearing on the injury question, as it applies in the particular case at hand.

The Commission attempts, in its investigative work, to be responsive not only to the facts of the competitive situation as they are developed, but also to the claims of the various parties involved in the case.

The criteria for finding injury vary from case to case. Some may be present in some cases, but not in others; some may be found in all cases and some may appear in none.

Generally, however, there are certain potential indicators of injury which the Commission always looks for and which always are investigated. These include rates of capacity utilization, employment, and profitability of domestic industry, especially during the period when Treasury found LTFV sales to have occurred.

There also is a search for evidence of price suppression by reason of the less than fair value imports, and considerable time is spent in each case in order to track down and verify domestic producers' claims of sales transactions lost to them as a result of the less than fair value imports.

While the law does not require that evidence of predatory pricing practices by foreign exporters be found, that is, affirmative determinations are perfectly possible in the absence of predatory pricing practices, such evidence, if it does exist, usually comes forth as a byproduct of the investigative work, and doubtlessly it would strengthen the case for an affirmative determination.

In my prepared statement, I have a short idealized schedule of how we proceed over the 3 months of the case, and I will skip over that right now.

I think that it would be best to stop and respond to any questions that you have at this time.

[The prepared statement follows:]

STATEMENT OF ROBERT A. CORNELL, ACTING DIRECTOR, OFFICE OF OPERATIONS, U.S. INTERNATIONAL TRADE COMMISSION

In its present form, the Antidumping Act of 1921 (as amended) provides for a clear separation of responsibilities between the Department of the Treasury and the USITC with respect to antidumping actions. Upon receipt of a properly filed petition for investigation, Treasury's task is to perform the first half of the antidumping action, namely to investigate and determine both the fact and the degree of "Sales At Less Than Fair Value" (LTFV), as defined in the Act. If such sales are found, the case then is passed to the USITC, whose responsibility extends to an investigation of the injury question—i.e. the USITC must determine whether a U.S. industry is suffering or is threatened with injury (or is prevented from being established) by reason of the LTFV sales. The USITC's determination is communicated to the Executive within 90 days of original receipt of the case from Treasury; if the determination is in the affirmative (or

in the case of a tied vote among the Commissioners, which the law specifies be deemed an affirmative finding), dumping duties are levied by Customs.

The process described above can be short-circuited under certain conditions specified in an amendment to the Antidumping Act provided by the Trade Act of 1974. If, in the early stages of its investigation of LTFV sales, Treasury determines that there is substantial doubt of injury, the case can be quickly passed to the USITC for a 30-day inquiry whose purpose is to determine whether there is any reasonable indication of injury. If the Commission finds such indication, the case returns to Treasury for normal treatment, ultimately coming back to the USITC for the standard injury investigation. If such indication is not found, that particular antidumping action stops.

Clearly, the division of responsibilities as between Treasury and the USITC nevertheless requires an extremely close working relationship between the two agencies. Such a relationship has been effective through the years, and it is improving as the caseload increases. On the USITC side, we have found Treasury personnel at all levels of management highly cooperative and deeply interested in working out new and better ways of coordinating our work within the prescriptions of the law.

In many respects, the injury investigations conducted by the USITC are procedurally similar to those generated under section 201 of the Trade Act.[1] Although the law permits the USITC only half the six-month period allowable for investigations under section 201, the antidumping injury investigation nevertheless attempts to be a full "conditions of competition" study, with a public hearing and intensive investigative/research efforts by the Commission. In its work, the Commission studies the domestic industry involved, collecting and analyzing information on its capacity, output, sales, inventories, profitability, employment, investment performance, and R&D outlays. Another line of research covers importers; aside from the standard objective of discovering the impact of imports on U.S. markets, this part of the investigation also explores relationships between the LTFV imports found by Treasury and other imports of the same products, to which the LTFV sales determination does not apply. A third major line of investigation focuses on the U.S. markets in which both the domestically produced and the imported product compete. Here, the USITC studies the distribution chains of both domestic producers and importers, collecting and analyzing information on purchases, sales, inventories, and prices at key points in the distribution chain up to and including the retail level.

Despite the obvious similarities which apply to most if not all antidumping cases, the Commission tries not to take a "formula" approach in its injury investigations. Instead, it attempts to consider each case as a "de novo" effort, with its own special situations and pecularities that may have a bearing on the injury question. It attempts, in its investigative work, to be responsive not only to the facts of the competitive stiuation as they are developed, but also to the claims of the various interested parties in the case. The criteria for finding injury vary from case to case; some may be present in some cases but not others, some may be found in all, and some may appear in none. Generally, however, there are certain potential indicators of injury which the Commission always looks for and which always are investigated. These include rates of capacity utilization, employment, and profitability of the domestic industry, especially during the periods when Treasury has found LTFV sales to have occurred. There also is a search for evidence of price suppression by reason of the LTFV imports, and considerable time is spent in each case in order to track down and verify domestic producers' claims of sales transactions lost to them as a result of the LTFV imports. While the law does not require that evidence of predatory pricing practices by foreign exporters be found (i.e. affirmative determinations are perfectly possible in the absence of predatory pricing practices), such evidence, if it exists, usually comes forth as a by-product of the investigative work, and doubtlessly it would strengthen the case for an affirmative determination.

Procedurally, antidumping injury investigations at the USITC run on very tight and inflexible schedules dictated by the large volume of work that must be done within the 90-day period mandated by law for the conduct of these inves-

[1] Substantively, of course, there are differences. Under sec. 201, the USITC investigates to determine whether imports generally are a substantial cause of serious injury to a U.S. industry; in an antidumping case, the focus is on LTFV imports, and the criteria for injury determination are less strictly specified.

tigations. Over the thirteen-week (less one day) investigative period, the following steps must be followed:

Week No. 1: Letter advising of LTFV sales received from Treasury; investigation instituted, planned, and set in motion.

Week No. 3: Commission staff sent into the field to confer with domestic producers, importers, and purchasers; questionnaire to gather the necessary data and information is fieldtested.

Week No. 5: Questionnaires are mailed, with 3-week deadline for respondents.

Week No. 7: Public hearing.

Week No. 10: Commission staff completes draft of its report to the Commission and circulates it for review by senior staff officials.

Week No. 11: Commission receives the report and begins its final deliberations.

Week No. 12: Commission receives oral briefing on the case from staff, votes on the case, and approves the final report.

Week No. 13: Formal determinations are drafted and approved; public and confidential versions of the report are prepared and printed; case goes out the door.

Over the years, the Commission has taken considerable pride in its on-time performance. In no case has a statutory deadline— on an antidumping or any other case—ever been missed. Moreover, we feel that with the procedures that have been developed over the years to handle the investigative work, adherence to strict time limits has not caused quality to suffer. On the contrary, it has produced within the USITC a cadre of highly skilled and very fast workers. Recognizing their competence, the public—upon whose responses to formal and informal inquiries of the Commission the USITC depends heavily in uncovering the necessary facts and information—has been quick to cooperate and assist.

Mr. VANIK. Our inquiry today relates to the matter of antidumping. You have two or three cases—how many do we have? Is that certain whether you have two, or do we have three?

Mr. HATTON. Four, I think.

Mr. VANIK. We ought to settle that point.

Mr. CORNELL. We can do that very simply.

Mr. VANIK. One, two, three, four, five. I know I have five fingers. We ought to be able to——

Mr. HATTON. We will get that for you.

Mr. VANIK. It seems to me that you have this staff that is probably best engineered to get a tremendous amount of factual information. If you have three cases, you have 120 people per case, and I know of no other staffing that is comparable.

I have gone through the Treasury structure, and I really don't know how they can handle the volume of business that they are going to get and have with the staff that is onboard.

I think Mr. Jones went very adequately to that issue.

Now, today we had the statement in the newspaper which correctly or incorrectly referred to something like a reference price.

I see nothing in the law that would preclude your fine staff from really helping to develop a reference price that might be utilized by the Customs people as something they could use for an early warning.

Now, do you agree with me that you have that authority under the law, to really establish a basis of reference price?

Mr. CORNELL. Yes, sir, I think I do agree with you, because under section 332 of the Tariff Act, we have a general research responsibility——

Mr. VANIK. Why don't you, in your research authority, just establish something that you might call a reference price, or use any other name that might be appropriate, and find out if this information could be delivered to someone, because if it is just developed and not used, it

won't serve anything; is there any reason that that information could not be relayed to Customs?

It is part of our early warning system. This doesn't change anything. It just gives the customs service a thing on which they could trigger an early warning system. Could that be done?

Mr. CORNELL. Yes, sir.

Mr. VANIK. Why don't you take that back with you today as an idea we have developed, you know, in the course of our conversation today, that perhaps you could establish the machinery that the customs service obviously couldn't establish in determining when a given group of imports or when commodities coming in might be coming in a situation that certainly ought to trigger our further examination.

Now, if the ITC can establish a reference price system and deliver that information somehow through the process of government to the Customs offices, and if they have developed a technique of early warning, I think we could be on the road to developing a workable system to deal with unfair imports.

Don't you agree?

Mr. CORNELL. Yes, sir, I agree.

Mr. VANIK. Well——

Mr. HATTON. Do you envision a number of different products, many, many products?

Mr. VANIK. Everything that is imported. I don't want to make a list on things that are not imported, things that are substantially imported.

I think that when you go down the laundry list, you could reduce it to probably 35 or 40 sensitive things, and just in watching—Customs will give you the import volumes, and you could develop your list out of that kind of a response from Customs.

Mr. HATTON. I understand.

Mr. VANIK. If that is within the scope of your authority, and you are the best agency to get the information together, you have the staff, it would seem to me if there is any viability for an early warning system, the development of a reference point, that your staff ought to be best prepared to give us a reference point.

And, then, we could test that process and see how it might work.

Mr. Steiger?

Mr. STEIGER. The statement you have given us, Mr. Cornell, is a relatively bland statement that simply talks about what ITC does. Is this a statement on behalf of the Commission, is it a statement on your behalf, describing the technical characteristics of the work that you undertake?

Mr. CORNELL. It is a statement on behalf of the Commission, sir, in response to what we thought the questions were. Perhaps we misunderstood the questions.

Mr. STEIGER. And the statement was cleared by the Commissioners then?

Mr. CORNELL. It was communicated to the Commissioners. They were all out of town on hearings when the thing went forward yesterday. One of them called me yesterday and talked about it. But, essentially, there were very few changes made.

Mr. STEIGER. All right. One of the procedures that the Trade Commission uses, as differentiated from the customs service, if my memory is correct, is that you do in fact, as in the television situation, purchase products in the home country, do you not?

Mr. CORNELL. Yes, sir. This was not done in connection with the dumping investigation, though. This was done in connection with the discovery procedures connected with the section 337 case which we had.

In that case, there were sets purchased both here in the United States and abroad, and we hired a consulting firm with a lot of moxie in electronics to tear them apart and examine allegations that the insides of television sets sold in Japan were different from the insides of Japanese television sets sold in the United States.

It was largely a technical kind of effort in this attempt to answer the questions relevant in the proceeding. It was not done in connection with a dumping investigation——

Mr. HATTON. In response to your earlier question, there are three cases before the Commission.

Mr. STEIGER. What are the three cases, which I know you cannot talk about.

Mr. HATTON. One case on certain railroad track maintenance equipment and two cases on saccharin, one from Japan and one from Korea, imported saccharin.

Mr. VANIK. I didn't know they were dumping saccharin. [Laughter.]

Mr. STEIGER. I thought we were giving it to rats in Canada. Two cases of saccharin dumping?

Mr. CORNELL. That is why I originally said two cases. For purposes of doing the investigation, we are providing a single report on saccharin, although in the legal definition of the case there are two allegations, one of saccharin imports dumped from Japan and one of saccharin imports dumped from Korea, and they have to be considered, at least the Commission has to have the option of considering them, separately in its injury deliberations.

The other one is railway track maintenance equipment from Austria. This is a low period for us in terms of injury investigations connected with dumping cases.

Usually we have more than that on board at any one time. Obviously over the next 6 months to a year, we are expecting 10 times that many cases coming in.

Mr. STEIGER. Is the period of time granted to you too long, too short?

Mr. CORNELL. In my judgment, it is just sufficient.

Mr. VANIK. Can you handle these three cases in 3 months?

Mr. CORNELL. Three months per case.

Mr. VANIK. Then you have 90 days. Well, I think many Members of Congress would like to have three questions to decide in 90 days. We have to decide the abortion issue about three times a week. [Laughter.]

Mr. CORNELL. The ITC doesn't exist just to process antidumping cases. We also do section 201 investigations, we also do various kinds of——

Mr. VANIK. I know there is other work. Are you through, Mr. Steiger?

Mr. STEIGER. Would it be possible for you to give us, or submit for the record, let's say in the period beginning in 1975 through today, how many dumping cases have come to you from Treasury?

Mr. CORNELL. Yes, sir. As a matter of fact, a large amount of data relating to those cases were forwarded to your committee staff yesterday afternoon, large tables indicating what is happening to imports under all the cases since 1971.

Mr. STEIGER. Thank you, very much. I do see that information.

[The tables follow:]

TABLE 1.—SELECTED DATA CONCERNING AFFIRMATIVE DETERMINATIONS MADE BY THE U.S. INTERNATIONAL TRADE COMMISSION (U.S. TARIFF COMMISSION) UNDER THE ANTIDUMPING ACT, 1921, AS AMENDED, DURING 1971 AND 1972

ITC (TC) investigation Nos.	Product	Country	Date of complaint to Treasury [1]	Period of withholding of appraisement	Date of ITC (TC) report	ITC (TC) vote		Value of subject U.S. imports for consumption (in dollars)			
						Affirmative	Negative	Calendar year preceding ITC determination [2]	Calendar year of ITC determination	Calendar year following ITC determination	Calendar year 1976
	1971										
AA1921-65	Ferrite cores	Japan	Mar. 22, 1968	July 27, 1970 to Jan. 27, 1971	Jan. 28, 1971	3	2	1,213,998	925,731	1,237,099	6,284,000
AA1921-66	Television sets	do	do	Aug. 28, 1970 to Feb. 28, 1971	Mar. 4, 1971	5	0	214,109,157	320,811,983	302,955,170	572,736,000
AA1921-68	Ceramic wall tile	United Kingdom	Feb. 27, 1969	Oct. 3, 1970 to Apr. 3, 1971	Apr. 7, 1971	4	1	3,427,862	3,902,166	4,623,666	806,000
AA1921-69	Clear plate and clear float glass.	Japan	May 16, 1969	Oct. 10, 1970 to Apr. 10, 1971	do	4	1	7,696,082	3,575,632	3,530,919	141,000
AA1921-70	Clear sheet glass	do	do	Oct. 3, 1970 to Apr. 3, 1971	do	4	1	2,992,748	1,401,725	3,914,802	884,000
AA1921-72	Pig iron	Canada	Feb. 3, 1969	Dec. 18, 1970 to June 18, 1971	June 15, 1971	4	0	13,720,204	15,401,154	25,068,269	33,791,000
AA1921-73	Do	Finland	do	Mar. 18, 1970 to June 18, 1971	do	2	2				
AA1921-74	Do	West Germany	do	do	do	4	0	8,878			
AA1921-76	Sheet glass	Taiwan	June 20, 1969	Jan. 15, to July 15, 1971	July 21, 1971	2	2	1,551,891	1,419,149	1,773,280	
AA1921-77	Tempered glass	Japan	Aug. 29, 1969	Jan. 29, to July 29, 1971	Aug. 3, 1971	2	2	1,539,488	1,620,957	2,764,708	1,465,000
AA1921-78	Sheet glass	France	Jan. 14, 1970	Apr. 28, to Oct. 28, 1971	Nov. 3, 1971	3	3	397,313	40,587	27,084	
AA1921-79	Do	Italy	do	do	do	3	3	3,118,807	1,779,629	1,674,045	
AA1921-80	Do	West Germany	do	do	do	3	3	2,253,055	741,136	335,833	520,000
	1972										
AA1921-83	Ice cream sandwich wafers	Canada	Oct. 19, 1970	Oct. 26, 1971 to Jan. 26, 1972	Feb. 1, 1972	4	2	[3]	[4]	[4]	[4]
AA1921-84	Diamond tips for phonograph needles.	United Kingdom	Nov. 24, 1970	Aug. 16, 1971 to Feb. 16, 1972	Feb. 17, 1971	6	0	[3]	[4]	[4]	[4]
AA1921-85	Fish netting of manmade fiber.	Japan	Sept. 2, 1970	Oct. 19, 1971 to Apr. 19, 1972	Apr. 18, 1972	4	2	1,435,193	1,351,547	2,359,648	2,320,000
AA1921-86	Large power transformers	France	Mar. 11, 1970	Oct. 21, 1971 to Apr. 21, 1972	Apr. 20, 1972	4	0	712,619	347,879	838,972	427,000
AA1921-87	Do	Italy	do	do	do	4	0	1,061,318	710,388	841,441	1,368,000
AA1921-88	Do	Japan	do	do	do	4	0	1,252,287	1,286,717		1,057,000
AA1921-89	Do	Switzerland	do	do	do	4	0	931,149	1,167,713	390,005	1,061,000
AA1921-90	Do	United Kingdom	do	do	do	4	0	1,195,414	1,128,980	2,384,648	210,000
AA1921-91	Asbestos cement pipe	Japan	Nov. 12, 1970	Oct. 26, 1971 to Apr. 26, 1972	May 2, 1972	2	2	1,431,188	548,468		
AA1921-92	Elemental sulphur	Mexico	Mar. 2, 1971	Nov. 6, 1971 to May 6, 1972	May 4, 1972	6	0	15,927,254	8,051,633	6,012,887	41,257,000
AA1921-93	Cadmium	Japan	Jan. 27, 1971	Dec. 24, 1971 to June 24, 1972	June 3, 1972	4	0	1,796,926	177,053	110,966	
AA1921-97	Instant potato granules	Canada	Aug. 27, 1971	Mar. 4, to Sept. 4, 1972	Sept. 7, 1972	3	0	[3]	[4]	[4]	[4]
AA1921-98	Bicycle speedometers	Japan	June 9, 1971	June 25, to Sept. 25, 1972	Sept. 22, 1972	4	1	671,297	1,849,505	797,206	657,000
AA1921-99	Drycleaning machinery	West Germany	Feb. 12, 1971	Apr. 8, to Oct. 8, 1972	Sept. 29, 1972	5	0	2,366,528	1,943,274	1,733,760	565,000
AA1921-105	Northern bleached hardwood kraft pulp.	Canada	Sept. 10, 1971	June 30, to Dec. 30, 1972	Dec. 27, 1972	3	3	35,275,000	31,488,000	42,571,000	38,503,000
AA1921-105A	Do	do	June 25, 1974	do	Sept. 23, 1974	0	5	42,571,000	50,792,000	28,470,000	38,503,000

[1] Or date of institution of Treasury investigation.
[2] The total value of imports in this column designated as confidential is $1,716,951.
[3] Confidential data compiled from USITC questionnaires.
[4] Not available.

Source: Compiled from official statistics of the U.S. Department of Commerce, except as noted.

TABLE 2.—SELECTED DATA CONCERNING AFFIRMATIVE DETERMINATIONS MADE BY THE U.S. INTERNATIONAL TRADE COMMISSION (U.S. TARIFF COMMISSION) UNDER THE ANTIDUMPING ACT 1921, AS AMENDED, DURING 1973–77

ITC (TC) Investigation No.	Product	Country	Date of complaint to Treasury [1]	Period of withholding of appraisement	Date of ITC (TC) report	ITC (TC) vote		Value of subject U.S. imports for consumption (in dollars)			
						Affirmative	Negative	Calendar year preceding ITC determinations [2]	Calendar year of ITC determinations	Calendar year following ITC determinations	Calendar year 1976
	1973										
AA1921–110	Canned bartlett pears	Australia	Dec. 2, 1971	Sep. 1, 1972 to Mar. 1, 1973	Mar. 1, 1973	2	2	898,359	179,959		
AA1921–111	Roller chain	Japan	Dec. 27, 1971	Aug. 25, 1972 to Feb. 25, 1973	do	5	0	17,377,604	19,545,376	27,770,000	26,823,000
AA1921–114	Stainless steel plate	Sweden	Apr. 25, 1972	Feb. 2 to May 2, 1973	do	3	0	8,427,785	4,259,109	1,687,000	1,888,000
AA1921–115	Synthetic methionine	Japan	July 27, 1972	Feb. 15 to May 15, 1973	May 14, 1973	5	0	4,453,231	4,511,199	10,119,000	8,440,000
AA1921–117	Printed vinyl fabric	Brazil	Apr. 18, 1972	Jan. 18 to July 18, 1973	July 18, 1973	3	0	[3]	[4]	[4]	[4]
AA1921–118	Do	Argentina	do	Jan. 1 to July 18, 1973	do	3	0	[3]	[4]	[4]	[4]
AA1921–119	Stainless steel wire rods	France	Dec. 8, 1971	Jan. 8 to July 8, 1973	July 24, 1973	3	2	3,907,149	4,270,273	7,013,000	7,602,000
AA1921–124	Steel wire rope	Japan	July 11, 1972	Mar. 10 to Sept. 10, 1973	Sept. 7, 1973	2	1	10,621,053	13,962,972	25,292,000	17,651,000
AA1921–127	Elemental sulphur	Canada	Jan. 21, 1972	Apr. 23 to Oct. 23, 1973	Oct. 19, 1973	3	2	8,215,404	8,411,602	20,692,000	17,128,000
AA1921–129	Polychloroprene rubber	Japan	Nov. 14, 1972	June 13 to Oct. 31, 1973	Oct. 31, 1973	4	1	8,027,123	2,501,173	3,239,000	78,000
AA1921–130	Expanded metal of base metal	do	Jan. 12, 1973	Sept. 6 to Dec. 6, 1973	Nov. 30, 1973	2	2	1,137,417	815,775	520,000	963,000
AA1921–131	Calcium pantothenate	do	Oct. 20, 1972	June 8 to Dec. 8, 1973	Dec. 7, 1973	4	0	[3]	[4]	[4]	[4]
	1974										
AA1921–134	Primary lead metal	Australia	Feb. 16, 1973	July 27, 1973 to Jan. 24, 1974	Jan. 10, 1974	2	2	22,226,783	5,290,000	2,113,000	4,832,000
AA1921–134A	Do	do	Feb. 4, 1975	do	Apr. 21, 1976	0	6	2,113,000	4,832,000	[4]	4,832,000
AA1921–135	Do	Canada	Feb. 16, 1973	do	Jan. 10, 1974	2	2	18,097,822	21,846,000	20,464,000	24,807,000
AA1921–135A	Do	do	Feb. 4, 1975	do	Apr. 21, 1976	0	6	20,464,000	24,807,000	[4]	24,807,000
AA1921–137	Racing plates (aluminum horseshoes).	do			Jan. 24, 1974	4	0	137,134	132,000	230,000	184,000
AA1921–139	Picker sticks	Mexico	Mar. 28, 1973	Nov. 7, 1973 to May 7, 1974	May 6, 1974	4	1	[3]	[4]	[4]	[4]
	1975										
AA1921–143	Tapered roller bearings and parts.	Japan	Oct. 31, 1973	June 5 to Dec. 5, 1974	Jan. 3, 1975	4	2	19,540,000	14,539,000	26,277,000	26,277,000
AA1921–147	Electric golf cars	Poland	June 7, 1974	Mar. 14 to Sept. 14, 1975	Sept. 16, 1975	5	1	3,389,000	5,923,000	4,608,000	4,608,000

See footnotes at end of table.

TABLE 2.—SELECTED DATA CONCERNING AFFIRMATIVE DETERMINATIONS MADE BY THE U.S. INTERNATIONAL TRADE COMMISSION (U.S. TARIFF COMMISSION) UNDER THE ANTIDUMPING ACT, 1921, AS AMENDED, DURING 1973–77—Continued

ITC (TC) Investigation No.	Product	Country	Date of complaint to Treasury [1]	Period of withholding of appraisement	Date of ITC (TC) report	ITC (TC) vote		Value of subject U.S. imports for consumption (in dollars)			
						Affirmative	Negative	Calendar year preceding ITC determination [2]	Calendar year of ITC determinations	Calendar year following ITC determinations	Calendar year 1976
	1976										
AA1921–150	Birch 3-ply doorskins	Japan	Dec. 12, 1974	July 14, 1975 to Jan. 14, 1976	Jan. 12, 1976	4	2	8,740,000	14,179,000	[4]	14,179,000
AA1921–152	Water circulating pumps	United Kingdom	Apr. 25, 1975	Nov. 26, 1975 to May 26, 1976	May 27, 1976	4	2	[3]	[4]	[4]	[4]
AA1921–154	Acrylic sheet	Japan	July 21, 1975	Jan. 22 to July 27, 1976	July 26, 1976	3	3	[4]	[4]	[4]	[4]
AA1921–162	Melamine in crystal form	do	Dec. 19, 1975	June 18 to Dec. 18, 1976	Dec. 20, 1976	3	3	1,401,000	482,000	[4]	482,000
	1977										
AA1921–165	Metal-walled above ground swimming pools.	do	Apr. 21, 1976	Apr. 1 to July 1, 1977	June 29, 1977	3	2	[3]	[4]	[4]	[3]
AA1921–166	Certain parts for self-propelled bituminous paving equipment.	Canada	Oct. 7, 1977	Apr. 12 to July 12, 1977	July 7, 1977	2	2	[3]	[4]	[4]	[3]
AA1921–167	Pressure sensitive plastic tape	Italy	Apr. 8, 1976	Feb. 18 to Aug. 18, 1977	Aug. 31, 1977	3	2	[3]	[4]	[4]	[3]
AA1921–169	Animal glue and inedible gelatin	Yugoslavia	Dec. 23, 1976	Aug. 3 to Nov. 3, 1977	Oct. 29, 1977	3	2	772,000	[4]	[4]	772,000
AA1921–170	Do	Sweden	do	do	do	4	1	650,000	[4]	[4]	650,000
AA1921–171	Do	The Netherlands.	do	do	do	4	1	1,197,000	[4]	[4]	1,197,000
AA1921–172	Do	West Germany	do	do	do	3	2	825,000	[4]	[4]	825,000

[1] Or date of institution of treasury investigation.
[2] The total value of imports in this column designated as confidential data is $13,970,074.
[3] Confidential data compiled from USITC questionnaires.
[4] Not available.

Source; Compiled from official statistics of the U.S. Department of Commerce, except as noted.

TABLE 3.—AFFIRMATIVE DETERMINATIONS BY THE U.S. INTERNATIONAL TRADE COMMISSION (U.S. TARIFF COMMISSION) UNDER THE ANTIDUMPING ACT, 1921, AS AMENDED, DURING 1971 AND 1972, AND THE QUANTITY OF THE SUBJECT IMPORTS FOR CONSUMPTION, 1969–76

ITC (TC) investigation No.	Product	Country	Date of ITC (TC) report	Units of quantity	Quantity of U.S. imports from specified country							
					1969	1970	1971	1972	1973	1974	1975	1976
	1971											
AA1921-65	Ferrite cores	Japan	Jan. 28, 1971	Units	23,977,350	23,992,297	16,804,059	40,541,150	19,804,560	13,542,354	71,503,823	47,248,051
AA1921-66	*Television sets*	do	Mar. 4, 1971	do	3,088,083	2,460,446	3,739,606	2,871,235	2,041,971	1,799,816	1,682,815	4,097,678
AA1921-68	Ceramic wall tile	United Kingdom	Apr. 7, 1971	Square feet	20,286,586	13,654,115	15,655,282	17,030,074	12,569,716	15,490,517	3,181,730	1,699,730
AA1921-69	Clear plate and clear float glass	Japan	do	do	23,476,886	19,672,374	8,533,976	8,966,911	7,692,058	3,362,596	476,278	337,310
AA1921-70	Clear sheet glass	do	do	Pounds	36,021,594	34,869,434	17,572,817	56,358,502	37,041,323	13,884,673	7,958,831	6,778,341
AA1921-72	Pig iron	Canada	June 15, 1971	Long tons	263,460	222,437	241,103	370,793	345,686	257,995	200,324	201,363
AA1921-73	Do	Finland	do	do	62,360							
AA1921-74	Do	West Germany	do	do	34,075	100			55		4,993	
AA1921-76	Sheet glass	Taiwan	July 21, 1971	Pounds	29,607,769	27,745,877	21,730,949	25,982,614	24,786,355	8,029,279		
AA1921-77	Tempered glass	Japan	Aug. 3, 1971	Square feet	4,103,971	4,049,218	3,401,094	6,587,125	4,036,617	1,444,324	447,459	702,167
AA1921-78	Sheet glass	France	Nov. 3, 1971	Pounds	6,642,642	4,922,054	426,384	383,753				
AA1921-79	Do	Italy	do	do	45,570,861	40,274,325	22,669,724	20,920,043	13,063,488	7,332,282		
AA1921-80	Do	West Germany	do	do	27,177,487	26,262,548	7,737,155	1,915,423	826,574	206,019	396,382	481,809
	1972											
AA1921-83	Ice cream sandwich wafers	Canada	Feb. 1, 1972	do		(1)	(1)	(2)	(2)	(2)	(2)	(2)
AA1921-84	Diamond tips for phonograph needles.	United Kingdom	Feb. 17, 1972	Units	(1)	(1)	(2)	(2)	(2)	(2)	(2)	(2)
AA1921-85	Fish netting of manmade fiber	Japan	Apr. 18, 1972	Pounds	662,411	723,368	801,357	644,862	963,604	1,022,724	450,862	747,678
AA1921-86	Large power transformers	France	Apr. 20, 1972	Units	34	127	18	4	47	1	5	32
AA1921-87	Do	Italy	do	do	19	22	26	10	6	13	21	13
AA1921-88	Do	Japan	do	do	8,524	71	26	9			219	677
AA1921-89	Do	Switzerland	do	do	22	49	156	14	10	31	18	210
AA1921-90	Do	United Kingdom	do	do	222	9	128	5	15		35	19
AA1921-91	*Asbestos cement pipe*	*Japan*	May 2, 1972	Pounds	54,606,434	42,283,121	34,374,646	13,348,457				
AA1921-92	Elemental sulphur	Mexico	May 4, 1972	Long tons	845,178	538,985	469,081	268,809	301,731	954,295	967,118	734,356
AA1921-93	Cadmium	Japan	June 3, 1972	Pounds	140,739	931,979	938,392	128,394	39,793	30,488		
AA1921-97	Instant potato granules	Canada	Sept. 7, 1972	do	(1)	(1)	(1)	(2)	(2)	(2)	(2)	(2)
AA1921-98	Bicycle speedometers	Japan	Sept. 22, 1972		(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)
AA1921-99	Drycleaning machinery	West Germany	Sept. 29, 1972	Units	228	399	314	262	225	88	58	112
AA1921-105	Northern bleached hardwood pulp.	Canada	Dec. 27, 1972	Short tons	283,543	253,606	266,133	237,431	249,843	174,063	83,666	118,383
AA1921-105A	Do	do	Sept. 23, 1974	do	283,543	253,606	266,133	237,431	249,843	174,063	83,666	118,383

[1] Confidential data compiled from USITC questionnaires.
[2] Not available.

Source: *Compiled from official statistics of the U.S. Department of Commerce, except as noted.*

TABLE 4.—AFFIRMATIVE DETERMINATIONS BY THE U.S. INTERNATIONAL TRADE COMMISSION (U.S. TARIFF COMMISSION) UNDER THE ANTIDUMPING ACT, 1921, AS AMENDED, DURING 1973–77, AND THE QUANTITY OF THE SUBJECT IMPORTS FOR CONSUMPTION, 1969–76

ITC (TC) investigation No.	Product	Country	Date of ITC (TC) report	Units of quantity	Quantity of U.S. imports from specified country							
					1969	1970	1971	1972	1973	1974	1975	1976
	1973											
AA1921-110	Canned bartlett pears	Australia	Mar. 1, 1973	Pounds	944,766	4,755,757	15,528,578	8,246,709	1,454,231			
AA1921-111	Roller chain	Japan	do	do	13,664,601	14,987,178	17,069,335	27,177,365	25,753,938	30,073,352	21,751,854	28,846,374
AA1921-114	Stainless steel plate	Sweden	May 1, 1973	do	4,033,346	3,161,256	7,924,604	19,979,229	9,210,219	2,512,151	4,014,739	2,542,045
AA1921-115	Synthetic methionine	Japan	May 14, 1973	do	5,426,949	5,800,723	8,973,015	7,892,374	4,774,640	7,048,245	4,135,727	9,313,163
AA1921-117	Printed vinyl fabric	Brazil	July 18, 1973	Yards			(2)	(2)	(1)	(1)	(1)	(1)
AA1921-118	do	Argentina	do	do			(2)	(2)	(1)	(1)	(1)	(1)
AA1921-119	Stainless steel wire rods	France	July 24, 1973	Pounds	10,254,011	10,471,946	9,248,195	9,034,744	7,685,231	12,007,495	4,960,701	10,432,734
AA1921-124	Steel wire rope	Japan	Sept. 7, 1973	do	28,156,528	29,240,821	31,575,180	40,146,237	41,122,510	41,895,629	51,222,895	32,785,125
AA1921-127	Elemental sulphur	Canada	Oct. 19, 1973	Long tons	929,202	998,008	849,700	868,374	904,521	1,194,117	329,908	968,463
AA1921-129	Polychloroprene rubber	Japan	Oct. 31, 1973	Pounds	(2)	(2)	(2)	18,684,676	5,809,019	5,331,837	525,492	184,913
AA1921-130	Expanded metal of base metal.	do	Nov. 30, 1973	Square feet.	5,211,919	4,844,500	3,852,046	7,427,015	4,316,317	1,309,734	1,195,719	3,362,044
AA1921-131	Calcium pantothenate	do	Dec. 7, 1973	Kilograms	(1)	(2)	(2)	(2)	(1)	(1)	(1)	(1)
	1974											
AA1921-134	Primary lead metal	Australia	Jan. 10, 1973	Content pounds.	169,746,184	119,316,136	113,607,773	113,304,258	148,856,993	36,927,880	16,814,651	33,875,188
AA1921-134A	do	do	Apr. 21, 1976	do	169,746,184	119,316,136	113,607,773	113,304,258	148,856,993	36,927,880	15,814,651	33,875,188
AA1921-135	do	Canada	Jan. 10, 1974	do	182,149,188	175,809,378	188,231,541	199,157,130	157,827,406	121,030,426	108,626,475	115,577,124
AA1921-135A	do	do	Apr. 21, 1976	do	182,149,188	175,809,378	188,231,541	199,157,130	157,827,406	121,030,426	108,626,475	115,577,124
AA1921-137	Racing plates (aluminum horseshoes).	do	Jan. 24, 1974	Pounds		542	16,417	509,714	916,568	44,037	67,157	53,156
AA1921-139	Picker sticks	Mexico	May 6, 1974	Units	(1)	(1)	(1)	(2)	(2)	(1)	(1)	(1)

	1975											
AA1921-143	Tapered roller bearings and parts.	Japan	Jan. 3, 1975	Pounds	8, 300, 958	6, 599, 484	8, 121, 785	14, 481, 792	16, 756, 279	17, 667, 542	10, 335, 341	18, 682, 258
AA1921-147	Electric golf cars	Poland	Spet. 16, 1975	Units			959	2, 799	6, 087	6, 897	9, 982	6, 331
	1976											
AA1921-150	Birch 3-ply doorskins	Japan	Jan. 12, 1976	Square feet.	96, 275, 000	104, 732, 000	79, 699, 000	86, 535, 000	73, 194, 000	54, 949, 000	80, 084, 000	106, 597, 000
AA1921-152	Water circulating pumps	United Kingdom	May 27, 1976	Units							(2)	
AA1921-154	Acrylic sheet	Japan	July 26, 1976	Pounds	(1)	(1)	(2)	(2)	(2)	(2)	(2)	(1)
AA1921-162	Melamine in crystal form	do	Dec. 20, 1976	do	10, 037, 262	4, 102, 160	7, 826, 168	5, 671, 148	302, 478	2, 749, 873	5, 069, 879	1, 798, 650
	1977											
AA1921-165	Metal-walled above ground swimming pools.	do	June 29, 1977	Units	(1)	(1)	(1)	(1)	(2)	(2)	(2)	(2)
AA1921-166	Certain parts for self-propelled bituminus paving equipment.	Canada	July 7, 1977		(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
AA1921-167	Pressure sensitive plastic tape.	Italy	Aug. 31, 1977	1,000 square yards.	(1)	(1)	(1)	(1)	(2)	(2)	(2)	(2)
AA1921-169	Animal glue and inedible gelatin.	Yugoslavia	Oct. 29, 1977	Pounds	1, 070, 117	672, 462	1, 116, 129	1, 236, 000	2, 480, 000	1, 128, 000	695, 000	5, 092, 000
AA1921-170	do	Sweden	do	do	845, 425	2, 260, 122	2, 325, 981	3, 840, 000	1, 924, 000	1, 392, 000	986, 000	2, 441, 000
AA1921-171	do	The Netherlands	do	do	3, 267, 241	3, 714, 632	4, 172, 293	5, 906, 000	6, 867, 000	5, 685, 000	2, 741, 000	4, 606, 000
AA1921-172	do	West Germany	do	do	10, 089, 368	6, 543, 141	8, 552, 407	8, 181, 000	4, 609, 000	4, 734, 000	2, 070, 000	2, 478, 000

[1] Not available. [2] Confidential data compiled from USITC questionnaires.

TABLE 5.—AFFIRMATIVE DETERMINATIONS BY THE U.S. INTERNATIONAL TRADE COMMISSION (U.S. TARIFF COMMISSION) UNDER THE ANTIDUMPING ACT, 1921, AS AMENDED, DURING 1971 AND 1972, AND THE VALUE OF THE SUBJECT IMPORTS FOR CONSUMPTION, 1969–76

ITC (TC) Investigation No.	Products	Country	Date of ITC (TC) report	Value of U.S. imports from specified country (in dollars)							
				1969	1970	1971	1972	1973	1974	1975	1976
	1971										
AA1921–65	Ferrite cores	Japan	Jan. 28, 1971	849,249	1,213,998	925,731	1,237,099	1,910,236	2,372,000	2,532,000	6,284,000
AA1921–66	Television sets	do	Mar. 4, 1971	250,616,857	214,109,167	320,881,983	302,955,170	263,945,292	243,129,000	234,800,000	572,736,000
AA1921–68	Ceramic wall tile	United Kingdom	Apr. 7, 1971	5,138,083	3,427,862	3,902,166	4,623,666	3,710,362	5,649,000	1,411,000	806,000
AA1921–69	Clear plate and clear float glass	Japan	do	9,239,516	7,696,082	3,575,623	3,530,919	2,957,746	1,336,000	190,000	141,000
AA1921–70	Clear sheet glass	do	do	3,897,773	2,992,748	1,401,725	3,914,802	2,967,067	1,375,000	1,085,000	884,000
AA1921–72	Pig iron	Canada	June 15, 1971	14,448,967	13,720,204	15,401,154	25,068,269	26,132,285	32,568,000	35,392,000	33,791,000
AA1921–73	do	Finland	do	2,422,169							
AA1921–74	do	West Germany	do	1,504,439	8,878			4,400		899,000	
AA1921–76	Sheet glass	Taiwan	July 21, 1971	1,812,744	1,551,891	1,419,149	1,773,280	1,809,816	611,000		
AA1921–77	Tempered glass	Japan	Aug. 3, 1971	1,403,204	1,539,488	1,620,957	2,764,708	1,953,010	1,282,000	766,000	1,465,000
AA1921–78	Sheet glass	France	Nov. 3, 1971	587,914	397,313	40,587	27,084				
AA1921–79	do	Italy	do	3,513,109	3,118,807	1,779,629	1,674,045	1,201,341	565,000		
AA1921–80	do	West Germany	do	2,329,246	2,253,055	741,136	335,833	283,013	126,000	390,000	520,000
	1972										
AA1921–83	Ice cream sandwich wafers	Canada	Feb. 1, 1972		(1)	(1)	(2)	(2)	(2)	(2)	(2)
AA1921–84	Diamond tips for phonograph needles.	United Kingdom	Feb. 17, 1972	(1)	(1)	(1)	(2)	(2)	(2)	(2)	(2)
AA1921–85	Fish netting of manmade fiber	Japan	Apr. 18, 1972	953,211	1,129,052	1,435,193	1,351,547	2,359,648	4,311,000	1,753,000	2,320,000
AA1921–86	Large power transformers	France	Apr. 20, 1972	184,373	1,236,129	712,619	347,879	838,927	87,000	63,000	427,000
AA1921–87	do	Italy	do	2,155,639	691,212	1,061,318	710,388	841,441	99,0000	2,920,000	1,368,000
AA1921–88	do	Japan	do	1,850,916	3,149,326	1,252,287	1,286,717			1,810,000	1,057,000
AA1921–89	do	Switzerland	do	1,256,463	1,441,673	931,149	1,167,713	390,005	641,000	534,000	1,061,000
AA1921–90	do	United Kingdom	do	1,823,054	331,885	1,195,414	1,128,980	2,384,648		327,000	210,000
AA1921–91	Asbestos cement pipe	Japan	May 2, 1972	2,268,869	1,785,636	1,431,188	548,468				
AA1921–92	Elemental sulphur	Mexico	May 4, 1972	33,849,609	20,114,908	15,927,254	8,051,633	6,012,887	30,299,000	49,417,000	41,257,000
AA1921–93	Cadmium	Japan	June 3, 1972	474,158	2,705,200	1,796,926	177,053	110,966	104,000		
AA1921–97	Instant potato granules	Canada	Sept. 7, 1972	(2)	(1)	(1)	(2)	(2)	(2)	(2)	(2)
AA1921–98	Bicycle speedometers	Japan	Sept. 22, 1972	349,421	486,036	671,297	1,849,505	799,206	487,000	410,000	657,000
AA1921–99	Drycleaning machinery	West Germany	Sept. 29, 1972	1,106,350	2,178,851	2,366,528	1,943,274	1,733,760	867,000	490,000	565,000
AA1921–105	Northern bleached hardwood kraft pulp	Canada	Dec. 27, 1972	35,773,000	36,121,000	35,275,000	31,488,000	42,571,000	50,792,000	28,470,000	38,503,000
AA1921–105A	do	do	Sept. 23, 1974	35,773,000	36,121,000	35,275,000	31,488,000	42,571,000	50,792,000	28,470,000	38,503,000

[1] Confidential data compiled from USITC questionnaires.
[2] Not available.

Source: Compiled official statistics of the U.S. Department of Commerce, except as noted.

TABLE 6.—AFFIRMATIVE DETERMINATIONS BY THE UNITED STATES INTERNATIONAL TRADE COMMISSION (U.S. TARIFF COMMISSION) UNDER THE ANTIDUMPING ACT, 1921, AS AMENDED, DURING 1973–77, AND THE VALUE OF THE SUBJECT IMPORTS FOR CONSUMPTION, 1969–76

ITC (TC) investigation No.	Product	Country	Date of ITC (TC) report	Value of U.S. imports from specified country (in dollars)							
				1969	1970	1971	1972	1973	1974	1975	1976
	1973										
AA1921–110	Canned bartlett pears	Australia	Mar. 1, 1973	129,506	540,096	1,816,385	898,359	179,959			
AA1921–111	Roller chain	Japan	do	6,164,106	7,837,580	8,268,358	17,377,604	19,545,376	27,770,000	21,877,000	26,823,000
AA1921–114	Stainless steel plate	Sweden	May 1, 1973	1,528,141	1,624,444	3,435,138	8,427,785	4,259,109	1,687,000	3,282,000	1,888,000
AA1921–115	Synthetic methionine	Japan	May 14, 1973	2,388,326	3,241,858	5,737,213	4,453,231	4,511,199	10,119,000	4,008,000	8,440,000
AA1921–117	Printed vinyl fabric	Brazil	July 18, 1973			(2)	(2)	(1)	(1)	(1)	(1)
AA1921–118	Printed vinyl fabric	Argentina	do			(2)	(2)	(1)	(1)	(1)	(1)
AA1921–119	Stainless steel wire rods	France	July 24, 1973	3,470,347	3,692,834	3,534,490	3,907,149	4,270,273	7,013,000	3,934,000	7,632,000
AA1921–124	Steel wire rope	Japan	Sept. 7, 1973	5,193,168	6,086,956	7,503,023	10,621,053	13,962,972	25,292,000	26,606,000	17,951,000
AA1921–127	Elemental sulphur	Canada	Oct. 19, 1973	23,334,081	14,005,214	10,319,525	8,215,404	8,411,602	20,692,000	21,398,000	17,728,000
AA1921–129	Polychloroprene rubber	Japan	Oct. 31, 1973	(2)	(2)	(2)	8,027,123	2,501,173	3,239,000	365,000	78,000
AA1921–130	Expanded metal of base metal	do	Nov. 30, 1973	829,428	735,662	620,684	1,137,417	815,775	520,000	383,000	963,000
AA1921–131	Calcium pantothenate	do	Dec. 7, 1973	(1)	(2)	(2)	(2)	(1)	(1)	(1)	(1)
	1974										
AA1921–134	Primary lead metal	Australia	Jan. 10, 1973	24,537,758	16,005,450	12,754,620	13,719,448	22,226,783	5,290,000	2,113,000	4,832,000
AA1921–134A	do	do	Apr. 21, 1976	24,537,758	16,005,450	12,754,620	13,719,448	22,226,783	5,290,000	2,113,000	4,832,000
AA1921–135	do	Canada	Jan. 10, 1974	21,524,056	24,161,118	22,452,563	26,001,760	18,097,822	21,846,000	20,464,000	24,807,000
AA1921–135A	do	do	Apr. 21, 1976	21,525,056	24,161,118	22,452,563	26,001,760	18,097,822	21,846,000	20,464,000	24,807,000
AA1921–137	Racing plates (aluminum horseshoes).	do	Jan. 24, 1974		1,000	5,386	104,095	137,134	132,000	230,000	184,000
AA1921–139	Picker sticks	Mexico	May 6, 1974	(1)	(1)	(1)	(2)	(2)	(1)	(1)	(1)

See footnotes at end of table.

TABLE 6.—AFFIRMATIVE DETERMINATIONS BY THE UNITED STATES INTERNATIONAL TRADE COMMISSION (U.S. TARIFF COMMISSION) UNDER THE ANTIDUMPING ACT, 1921, AS AMENDED, DURING 1973–77, AND THE VALUE OF THE SUBJECT IMPORTS FOR CONSUMPTION, 1969–76—Continued

ITC (TC) investigation No.	Product	Country	Date of ITC (TC) report	Value of U.S. imports from specified country (in dollars)							
				1969	1970	1971	1972	1973	1974	1975	1976
	1975										
AA1921–143	Tapered roller bearings and parts.	Japan	Jan. 3, 1975	5,616,787	4,868,270	6,833,566	12,496,958	16,406,034	19,640,000	14,539,000	26,277,000
AA1921–147	Electric golf cars	Poland	Spet. 16, 1975			357,107	1,143,227	2,396,991	3,389,000	5,923,000	4,608,000
	1976										
AA1921–150	Birch 3-ply doorskins	Japan	Jan. 12, 1976	8,425,203	7,799,971,	6,404,938	8,354,232	10,755,540	7,642,000	8,740,000	14,179,000
AA1921–152	Water circulating pumps	United Kigdom	May 27, 1976							(2)	
AA1921–154	Acrylic sheet	Japan	July 26, 1976	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
AA1921–162	Melamine in crystal form	do	Dec. 20, 1976	2,081,969	863,744	1,483,800	1,092,948	48,152	1,468,000	1,401,000	482,000
	1977										
AA1921–165	Metal-walled above ground swimming pools.	do	June 29, 1977	(1)	(1)	(1)	(1)	(2)	(2)	(2)	(2)
AA1921–166	Certain parts for self-propelled bituminous paving equipment.	Canada	July 7, 1977	(1)	(1)	(1)	(2)	(2)	(2)	(2)	(2)
AA1921–167	Pressure sensitive plastic tape	Italy	Aug. 31, 1977	(2)	(2)	(2)	(2)	1,484,000	(2)	(2)	(2)
AA1921–169	Animal glue and inedible gelatin	Yugoslavia	Oct. 29, 1977	251,492	140,964	219,945	247,000	493,000	468,000	355,000	772,000
AA1921–170	do	Sweden	do	107,248	355,711	369,829	765,000	513,000	769,000	334,000	650,000
AA1921–171	do	The Netherlands	do	634,620	736,766	823,214	1,289,000	1,949,000	2,071,000	880,000	1,197,000
AA1921–172	do	West Germany	do	1,483,515	1,109,776	1,473,124	1,442,000	1,191,000	2,234,000	1,161,000	825,000

[1] Not available.
[2] Confidential data compiled from USITC questionnaires.

Source: Compiled from official statistics of the US. Department of Commerce, except as noted.

TABLE 7.—AFFIRMATIVE DETERMINATIONS BY THE U.S. INTERNATIONAL TRADE COMMISSION (U.S. TARIFF COMMISSION) UNDER THE ANTIDUMPING ACT, 1921, AS AMENDED, DURING 1971 AND 1972, AND THE AVERAGE UNIT VALUE OF THE SUBJECT IMPORTS FOR CONSUMPTION, 1969–76

ITC (TC) investigation No.	Product	Country	Date of ITC (TC) report	Average unit value notations	Average unit value of U.S. imports from specified country							
					1969	1970	1971	1972	1973	1974	1975	1976
	1971											
AA1921-65	Ferrite cores	Japan	Jan. 28, 1971	Cents per unit	3.5	5.1	5.5	3.1	9.6	17.5	3.5	13.3
AA1921-66	Television sets	do	Mar. 4, 1971	Dollars per unit	18.16	87.02	85.81	105.51	129.26	135.09	139.53	139.77
AA1921-68	Ceramic wall tile	United Kingdom	Apr. 7, 1971	Cents per square foot	25.3	25.1	24.9	27.2	29.5	36.5	46.9	47.4
AA1921-69	Clear plate and clear float glass.	Japan	do	do	39.4	39.1	41.9	39.4	38.5	39.7	39.9	41.8
AA1921-70	Clear sheet glass	do	do	Cents per pound	10.8	8.6	8.0	6.9	8.0	9.9	13.6	13.0
AA1921-72	Pig iron	Canada	June 15, 1971	Dollars per long ton	54.84	61.68	63.88	67.61	75.60	126.24	176.67	167.81
AA1921-73	do	Finland	do	do	38.84							
AA1921-74	do	West Germany	do	do	44.15	88.78			80.00		180.05	
AA1921-76	Sheet glass	Taiwan	July 21, 1971	Cents per pound	6.1	5.6	6.5	6.8	7.3	7.6		
AA1921-77	Tempered glass	Japan	Aug. 3, 1971	Cents per square foot	34.2	38.0	47.7	42.0	48.4	88.8	171.2	208.6
AA1921-78	Sheet glass	France	Nov. 3, 1971	Cents per pound	8.9	8.1	9.5	7.1				
AA1021-79	do	Italy	do	do	7.7	7.7	7.9	8.0	9.2	7.7		
AA1921-80	do	West Germany	do	do	8.6	8.6	9.6	17.5	34.1	61.2	98.4	107.9

See footnotes at end of table.

TABLE 7.—AFFIRMATIVE DETERMINATIONS BY THE U.S. INTERNATIONAL TRADE COMMISSION (U.S. TARIFF COMMISSION) UNDER THE ANTIDUMPING ACT, 1921, AS AMENDED, DURING 1971 AND 1972, AND THE AVERAGE UNIT VALUE OF THE SUBJECT IMPORTS FOR CONSUMPTION, 1969–76—Continued

ITC (TC) investigation No.	Product	Country	Date of ITC (TC) report	Average unit value notations	Average unit value of U.S. imports from specified country							
					1969	1970	1971	1972	1973	1974	1975	1976
	1972											
AA1921–83	Ice cream sandwich wafers.	Canada	Feb. 1, 1972	do		(2)	(2)	(1)	(1)	(1)	(1)	(1)
AA1921–84	Diamond tips for phonograph needles.	United Kingdom	Feb. 17, 1972	Cents per unit	(2)	(2)	(2)	(1)	(1)	(1)	(1)	(1)
AA1921–85	Fish netting of manmade fiber.	Japan	Apr. 18, 1972	Dollars per pound	1.44	1.56	1.79	2.10	2.45	4.22	3.89	3.10
AA1921–86	Large power transformers	France	Apr. 20, 1972	Dollars per unit	5,422.73	9,733.30	39,589.94	86,969.75	17,850.47	87,000.00	12,600.00	13,343.75
AA1921–87	do	Italy	do	do	113,454.21	31,418.73	40,819.92	71,033.80	140,240.17	76,153.85	139,047.61	76,000.00
AA1921–88	do	Japan	do	do	217.14	44,356.70	48,164.88	142,968.56			8,264.84	1,561.30
AA1921–89	do	Switzerland	do	do	57,111.95	29,421.90	5,968.90	83,408.07	39,000.50	20,677.42	29,666.67	5,052.38
AA1921–90	do	United Kingdom	do	do	8,211.95	36,876.11	9,339.17	225,796.00	158,976.52		9,342.86	11,052.63
AA1921–91	Asbestos cement pipe	Japan	May 2, 1972	Cents per pound	4.2	4.2	4.2	4.1				
AA1921–92	Elemental sulphur	Mexico	May 4, 1972	Dollars per long ton	40.05	37.32	33.95	29.95	19.93	31.75	51.10	56.41
AA1921–93	Cadmium	Japan	June 3, 1972	Dollars per poind	3.37	2.90	1.91	1.38	2.79	3.41		
AA1921–97	Instant potato granules	Canada	Sept. 7, 1972	Cents per pound	(1)	(2)	(2)	(1)	(1)	(1)	(1)	(1)
AA1921–98	Bicycle speedometers	Japan	Sept. 22, 1972		(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
AA1921–99	Drycleaning machinery	West Germany	Sept. 29, 1972	Dollars per unit	4,852.41	5,460.78	7,536.71	7,417.08	7,705.60	9,852.27	8,448.28	5,044.64
AA1921–105	Northern bleached hardwood kraft pulp.	Canada	Dec. 27, 1972	Dollars per short ton	126.16	142.43	132.55	132.62	170.39	291.80	340.28	325.24
AA1921–105A	do	do	Sept. 23, 1974	do	126.16	142.43	132.55	132.62	170.39	291.80	340.28	325.24

[1] Not available.
[2] Confidential data compiled from USITC questionnaires.

Source: Compiled from official statistics of the U.S. Department of Commerce, except as noted,

TABLE 8.—AFFIRMATIVE DETERMINATIONS BY THE U.S. INTERNATIONAL TRADE COMMISSION (U.S. TARIFF COMMISSION) UNDER THE ANTIDUMPING ACT, 1921, AS AMENDED, DURING 1973–77, AND THE AVERAGE UNIT VALUE OF THE SUBJECT IMPORTS FOR CONSUMPTION, 1969–76

ITC (TC) investigation No.	Product	Country	Date of ITC (TC) report	Average unit value notations	Average unit value of U.S. imports from specified country							
					1969	1970	1971	1972	1973	1974	1975	1976
	1973											
AA1921-110	Canned bartlett pears	Australia	Mar. 1, 1973	Cents per pound	13.7	11.4	11.7	10.9	12.4			
AA1921-111	Roller chain	Japan	do	do	45.1	52.3	48.4	63.9	75.9	92.3	100.6	93.0
AA1921-114	Stainless steel plate	Sweden	May 1, 1973	do	37.9	51.4	43.3	42.2	46.2	67.2	81.7	74.3
AA1921-115	Synthetic methionine	Japan	May 14, 1973	do	44.0	55.9	63.9	56.4	94.5	143.6	96.9	90.6
AA1921-117	Printed vinyl fabric	Brazil	July 1, 1973	do			(2)	(2)	(1)	(1)	(1)	(1)
AA1921-118	do	Argentina	July 18, 1973	do			(2)	(2)	(1)	(1)	(1)	(1)
AA1921-119	Stainless steel wire rods	France	July 24, 1973	do	33.8	35.3	38.2	43.2	55.6	58.4	79.3	73.2
AA1921-124	Steel wire rope	Japan	Sept. 7, 1973	do	18.4	20.8	24.0	26.5	34.0	60.4	51.9	54.81
AA1921-127	Elemental sulphur	Canada	Oct. 19, 1973	Dollars per long ton	25.11	14.03	12.14	9.46	9.29	17.33	23.01	18.3
AA1921-129	Polychloroprene rubber	Japan	Oct. 31, 1973	Cents per pound	40.4	40.4	40.4	43.0	43.1	60.7	69.5	42.2
AA1921-130	Expanded metal of base metal	do	Nov. 30, 1973	Cents per square foot	15.9	15.2	16.1	15.3	18.9	39.7	32.0	28.6
AA1921-131	Calcium pantothenate	do	Dec. 7, 1973	Dollars per kilogram	(1)	(2)	(2)	(2)	(1)	(1)	(1)	(1)
	1974											
AA1921-134	Primary lead metal	Australia	Jan. 10, 1973	Cents per 100 lb	14.5	13.4	11.2	12.1	14.9	41.3	12.6	14.3
AA1921-134A	do	do	Apr. 21, 1976	do	14.5	13.4	11.2	12.1	14.9	14.3	12.6	14.3
AA1921-135	do	Canada	Jan. 10, 1974	do	11.8	13.7	11.9	13.1	11.5	18.1	18.8	21.5
AA1921-135A	do	do	Apr 21, 1976	do	11.8	13.7	11.9	13.1	11.5	18.1	18.8	21.5
AA1921-137	Racing plates (aluminum horseshoes)	Canada	Jan. 24, 1974	Cents per pound		184.5	32.8	20.4	15.0	299.7	342.5	346.2
AA1921-139	Picker sticks	Mexico	May 6, 1974	Dollars per unit	(1)	(1)	(1)	(2)	(2)	(1)	(1)	(1)
	1975											
AA1921-143	Tapered roller bearings and parts	Japan	Jan. 3, 1975	Cents per pound	67.7	73.8	84.1	86.3	97.9	111.2	140.7	140.7
AA1921-147	Electric golf cars	Poland	Sept. 16, 1975	Dollars per unit			372.37	408.44	393.79	491.37	593.37	727.85
	1976											
AA1921-150	Birch 3-ply doorskins	Japan	Jan. 12, 1976	Cents per square foot	8.8	7.4	8.0	9.7	14.7	13.9	10.9	13.3
AA1921-152	Water circulating pumps	United Kingdom	May 27, 1976	Dollars per unit							(2)	(1)
AA1921-153	Acrylic sheet	Japan	July 26, 1976		(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
AA1921-162	Melamine in crystal form	do	Dec. 20, 1976	Cents per pound	20.7	21.1	19.0	19.3	15.9	53.4	27.6	26.8
	1977											
AA1921-165	Metal-walled above-ground swimming pools	do	June 29, 1977	Dollars per unit	(1)	(1)	(1)	(1)	(2)	(2)	(2)	(2)
AA1921-166	Certain parts for self-propelled bituminous paving equipment.	Canada	July 7, 1977		(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
AA1921-167	Pressure sensitive plastic tape	Italy	Aug. 31, 1977	Cents per square yard	(1)	(1)	(1)	(1)	(2)	(2)	(2)	(2)
AA1921-169	Animal glue and inedible gelatin	Yugoslavia	Oct. 29, 1977	Cents per pound	23.5	21.0	19.7	20.0	19.9	41.5	51.1	15.2
AA1921-170	do	Sweden	do	do	12.7	15.7	15.9	19.9	26.7	55.2	33.9	26.6
AA1921-171	do	Netherlands	do	do	19.4	19.8	19.7	21.8	28.4	36.4	32.1	26.0
AA1921-172	do	West Germany	do	do	14.7	17.0	17.2	17.6	25.8	47.2	56.1	33.0

[1] Not available.
[2] Confidential data compiled from USITC questionnaires,

Source: Compiled from official statistics of the U.S. Department of Commerce, except as noted,

Mr. VANIK. That is very good information. We are happy to have that.

Mr. STEIGER. Did you supply a microscope for us to read that with? [Laughter.]

Mr. VANIK. Are you through, Mr. Steiger?

Mr. STEIGER. Yes.

Mr. VANIK. I have a series of questions, but I would prefer that they be answered in writing. I will read these eight questions and you can prepare a response which can be inserted in the record at this time.

One, what is the role of the ITC in an antidumping investigation?

Two, what are the criteria that the ITC uses to reach in a preliminary investigation its determination of substantial doubt of injury?

Three, what are the criteria that the ITC uses to determine injury, the likelihood of injury or the prevention of the establishment of a domestic industry?

Four, what pricing information does Treasury routinely transmit to the ITC when it sends you advice under section 201(a) of the act?

Do you send them all of the information at your disposal regarding U.S. sales of imported LTFV merchandise? Is this information put in a standard format?

Five, ordinarily, what time period would an ITC injury investigation cover?

Six, since the Antidumping Act is specifically excluded from the provisions of the Administrative Procedure Act, what sort of a record is maintained?

Seven, is it true that information submitted to the Commission or developed by the Commission staff is not subject to any rebuttal by any third party?

Eight, in the case of a negative injury determination, the question of the right of and place for a judicial review of that determination is presently in question in the SCM case.

Without commenting specifically on that case, what is the Commission's view on judicial review and in particular the scope of the review, the record available, and the reviewing court?

Now, we will submit these questions and we would appreciate a written response.

[Information follows:]

U.S. INTERNATIONAL TRADE COMMISSION,
Washington, D.C., November 16, 1977.

HON. CHARLES A. VANIK,
Chairman, Subcommittee on Trade, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to your request in a letter dated November 10, 1977, we have submitted for the record the answers to nine questions which you have asked of the U.S. International Trade Commission relating to its role in the administration of the Antidumping Act. A copy of that response is attached to this letter. One matter regarding the Commission's administration of the Antidumping Act may be of interest to you. As you know, the Commission recently promulgated procedural rules for antidumping proceedings. A number of persons who commented on those rules suggested that the Commission also issue interpretive rules. The Commission, in the public notice accompanying the issuance of the procedural rules, noted that it had taken this matter under advisement, and the Commission is presently studying the feasibility of issuing interpretive antidumping rules. We will keep the subcommittee informed of our progress in this matter.

You have also asked, in the same letter, that we explore a number of matters dealing with the possible development of a "reference price" system. The questions which you have raised with respect to this system are under consideration by the Commission's staff and we will have a response to you as soon as possible.

We appreciate the opportunity to be of service with respect to both of the above requests. If we may be of further assistance, please do not hesitate to call upon us.

I hope you have a nice day.

Yours sincerely,

DANIEL MINCHEW, *Chairman.*

Question 1. What is the role of the ITC in an antidumping investigation?

Answer. The basic statutory function of the Commission under the Antidumping Act, 1921, is contained in the operative language of section 201(a) of the act, that is, to determine—

"Whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States [i.e., a class or kind of foreign merchandise which the Secretary of the Treasury has determined is being, or is likely to be, sold in the United States or elsewhere at less than its fair value]." . . .

If the Commission makes an affirmative determination, the Treasury Department must assess dumping duties on entries imported at less than fair value. The Commission has historically been charged with ascertaining the impact of import competition in domestic product markets under its basic investigatory authority (19 U.S.C. 1332) and under special statutes such as the domestic legislation implementing the "escape clause" of the GATT. In 1954, the Congress at the request of the Treasury Department transferred the injury determination function of the Antidumping Act from the Treasury Department to the Commission to utilize government facilities more efficiently. S. Rep. No. 2326, 83d Cong., 2d Sess. 2 (1954).

The Commission also conducts preliminary inquires pursuant to section 201(c)(2) of the Act, when the Secretary, after receipt of a complaint, concludes that there is "substantial doubt" whether an industry is being injured, etc. If he does so conclude, he advises the Commission which then determines within 30 days whether "there is no reasonable indication" that an industry is being injured, etc. If the Commission's determination is affirmative, the Treasury investigation of the complaint is terminated, if negative, the Treasury investigation proceeds.

Question 2. What are the criteria that the ITC uses to reach in a preliminary investigation its determination of substantial doubt of injury?

Answer. Only two of the seven preliminary inquires conducted by the Commission under the Antidumping Act, 1921, have resulted in affirmative determinations of "no reasonable indication of injury" which determinations result in the termination of Treasury's investigation of the complaint.

The same indicia of injury examined in 3-month investigations under section 201(a) have been examined by the Commission in 30-day inquires under section 201(d)(1). These includes: underselling, lost sales, market pentration, unemployment, lost profits, production, capacity utilization, and inventories and the causal relationship of the LTFV imports to such matters. However, in 30-day inquires, the Commission does not determine whether an industry is, in fact, experiencing injury, or whether evidence might be adduced at a later time which would demonstrate such injury.

In the most recent preliminary inquiry, Methyl Alcohol from Brazil, USITC Publication 837, October 1977, four of the then five commissioners stated that "the quantum of proof required in inquiries under section 201(c)(2) is less than that require in a full investigation under section 201(a) of the Antidumping Act, 1921, as amended," at page 4.

Relatively small market penetration by LTFV imports seems to have been a factor in the two affirmative determinations. In Multimetal Lithographic Plates from Mexico, USITC Publication 775, May 1976 a unanimous Commission stated that "the ratio of import sales to total consumption of the plates considered competitive with the Mexican imports possibly sold at LTFV is approximately 3 percent." at page 5. In the previously mentioned Methyl Alcohol inquiry, there was only one shipment of methyl alcohol from Brazil in a period of more than five years.

Question 3. What are the criteria that the ITC uses to determine injury, the likelihood of injury or the prevention of the establishment of a domestic industry?

Answer. The Commission determines whether an industry in the United States "is being * * * injured" within the meaning of the Antidumping Act, 1921, by utilizing, among others, the following indicators of injury occurring "by reason of" the LTFV imports:

1. Price depression of the impacted competitive products;
2. Price suppression—e.g., although domestic production costs have increased competition from less-than-fair-value imports precludes price increases;
3. Market pentration by less-than-fair-value imports;
4. Documented lost sales of domestic manufacturers to the less-than-fair-value imports;
5. Operation of domestic production facilities at less than normal capacity;
6. Plant closures and unemployment;
7. Foreign capacity to produce for export;
8. Lost profits.

Indicia used by the Commission to determine whether, in the absence of actual injury, an industry "is likely to be injured" within the meaning of the Antidumping Act, 1921, include increasing LTFV imports and the capacity of the foreign exporters to continue to export in the same or larger volumes so that injury is imminent and not conjectural.

An example of a determination of likelihood of injury is illustrated in Printed Vinyl Film from Brazil and Argentina, investigation No. AA1921–117/118 (USITC Publication No. 595, July 1973, 38 F.R. 19873 (July 18, 1973)).

In its statement of reasons for the determination, the Commission indicated that the market penetration of less-than-fair-value imports had increased from none in 1970 to 1.1% of domestic consumption in 1971—not enough to justify a finding of present injury. Yet the rapid increases in less-than-fair-value imports combined with the ability of the foreign producers to increase their production and to alter production patterns to increase exports to the United States justified the finding of likelihood of injury.

To date, the issue of whether an industry has been prevented from being established has been addressed only once. In a case involving Regenerative Blower/Pumps from West Germany (investigation No. AA1921–140, U.S.I.T.C. Publication No. 676, May 1974, 39 F.R. 18814 (May 22, 1974), the Commission majority concluded that lost sales were attributable to product differentiation, not less-than-fair-value pricing. A dissenting opinion stressed that the less-than-fair-value German imports competed with imports from Japan; the exclusive importer of the Japanese product had made preparations to produce one model of the Japanese pump in the United States; and, the plans were altered because of the competition from less-than-fair-value imports. The dissenting commissioner concluded that forestalling the development of a stable and viable domestic production facility by less-than-fair-value imports satisfied the requirements of the Antidumping Act, 1921. The Commission majority concluded that as the exclusive importer of the Japanese product still intended to produce in the United States, the plans had not been altered significantly.

Question 4. What pricing information does Treasury routinely transmit to the International Trade Commission when it sends you advice under section 201(a) of the Act? Does it send you all information at its disposal regarding U.S. sales of the imported LTFV merchandise? Is this information put in a standard format?

Answer. During 1977, the Treasury Department has routinely transmitted to the Commission summaries of confidential pricing information gathered in its investigation. These summaries describe the total amounts of LTFV sales found, the average margins, and the foreign exporters involved. The information arrives in a more or less standard format. These summaries do not constitute all information at Treasury's disposal regarding U.S. sales of imported LTFV merchandise.

In the past, Treasury has sent to the Commission its complete file in each case where it advised the Commission of LTFV sales. This file included all submissions received by Treasury during the course of its investigation, the invoices and other import documents examined, work sheets of pricing data prepared by Customs Service staff showing for each shipment the bases for and calculations of the margins of dumping, and the explanatory memorandum transmitting the

matter from the Customs Service to Treasury. Because of the importance the Commission attaches to the information contained in the work sheets, in several investigations the Commission staff has requested, and received from Treasury, additional information and price data. The Commission and Treasury are working out on an informal and amicable basis an accommodation satisfactory to both agencies.

Question 5. Ordinarily, what time period would an ITC injury investigation cover?

Answer. The Commission ordinarily attempts to collect and analyze information on the relevant U.S. markets and industries for the five-year period preceding its investigation. Occasionally, conditions in U.S. markets may require an examination of different time periods. Special emphasis is usually placed on comparing the most recent half-year period for which such information is available with the comparable period in the preceding year. Such a comparison will generally encompass the period during which Treasury examined imports and home market sales of the LTFV merchandise where indicia relating to price competition, suppression and/or depression become most relevant.

Question 6. Since the Antidumping Act is specifically excluded from the provisions of the Administrative Procedure Act, what sort of a record is maintained?

Answer. The Commission is by law relieved of any obligation to make its determination in antidumping cases on the basis of anything like a judicial "record." This is because it is specifically, by statute, exempted from such requirements in the Administrative Procedure Act:

"The hearings provided for under this section shall be exempt from sections 554, 555, 556, 557, and 763 of title 5 of the United States Code." [19 U.S.C. 160(d)(3)]

This provision was added by the House Ways and Means Committee to the bill (which eventually became the Trade Act of 1974) in place of a provision in the bill as originally proposed that would have required on-the-record hearings. H.R. 6767, introduced April 10, 1973, provided (in subsection 301(b)),

"The transcript of the hearing, together with all papers filed in connection with the investigation (including any exhibits and papers to which the Secretary or the Tariff Commission, as the case may be, shall have granted confidential or in-camera treatment) constitutes the exclusive record for determination." . . .

This was deleted by the House Committee, and replaced by provisions essentially like those in the law, with this comment:

"Subsection (b) incorporates a new provision in the Antidumping Act which requires the Secretary of the Treasury or the Tariff Commission to hold a hearing prior to any determination under subsection (a). In order to preserve the informal and nonadversary nature of these proceedings, the hearings are specifically exempted from the procedural requirements of the Administrative Procedure Act. The transcript of each hearing plus all information developed in connection with the investigation, with the exception of material treated as confidential or otherwise exempt from disclosure under the Freedom of Information Act, shall be available to all persons."

For this reason, the Commission is not required to, and frequently does not, rely exclusively upon the "record" made at the hearing in such cases. Those hearings, as demonstrated by Commision transcripts, are more analogous to hearings of legislative committees than they are to judicial or quasi-judicial hearings. Exhibits are marked for identification, but they need not be sponsored by witnesses who can vouch for them. Customarily, the Commission staff collects information by questionnaire that is never released to the parties in the course of the hearing, although aggregates of these statistics are often revealed, when possible before the hearing and almost always after determination. These staff reports are understandably influential because they are objective.

In a sense, this problem turns on the definition of the word, "record." If it means the hearing transcript, public exhibits and non-confidential information, the information is public. Subsection 201(d)(3) provides,

"The transcript of any hearing, together with all the information developed in connection with the investigation (other than items to which confidential treatment has been granted by the Secretary or the Commission, as the case may be), shall be made available in the manner and to the extent provided in section 552(b) of such title [i.e., title 5, U.S.C.]"

The public can obtain this information by a simple request at any time.

The Commission determination, notices, and reasons in support of the determination are the exclusive "record" for review in Antidumping Act cases. Any other position suggests that the "substantial evidence" rule applies, as it clearly cannot to a non-Administration Procedure Act proceeding. See our response to question No. 8, below.[1]

Question 7. Is it true that information submitted to the Commission or developed by the Commission's staff is not subject to any rebuttal by any third party?

Answer. Confidential information submitted to the Commission in the course of an antidumping investigation is not subject to rebuttal by third parties during the course of Commission proceedings. Different types of information are submitted to the Commission or developed by the Commission's staff during investigations conducted under the Antidumping Act, 1921, as amended. In general, the nature of proceedings under the Act, which are specifically exempted from the requirements of the Administrative Procedure Act by section 201(d)(3), do not allow for third party rebuttal of information obtained by the Commission.

The first important submission received by the Commission is the Treasury file which is made available to the Commission at the time Treasury advises it of the LTFV determination. Treasury's advice includes a standard paragraph, as follows:

"Since some of the data in this file is regarded by the Treasury to be of a confidential nature, it is requested that the International Trade Commission consider all information therein contained for the official use of the International Trade Commission only, and not to be disclosed to others without prior clearance with the Treasury Department."

The file is returned to Treasury at the conclusion of the Commission's investigation.

A very significant source of the information developed during the course of an investigation consists of the testimony and exhibits submitted at legislative-type hearings. Although witnesses testimony is not made subject to formal examination and exhibits are not authenticated, questioning of witnesses by interested persons is permitted ". . . but only for the purpose of assisting the Commission in obtaining relevant and material facts with respect to the subject matter of the investigation." (19 C.F.R. 201.12(c).) In addition to such questioning, the uniform provision for post-hearing briefs invites rebuttal submissions to the Commission.

A second major component of a Commission investigation under the antidumping act consists of the data submitted to the Commisison by firms producing, importing and distributing the products under investigation. Such data is supplied in response to questionnaires mailed by the agency. Individual questionnaire responses are not made subject to rebuttal.

Each questionnaire contains carefully drafted instructions concerning the confidentiality of categories of information in order to preserve voluntary compliance with agency information requests. Occasionally, a major firm will refuse to submit requested data. When, in the judgment of the Commission, the firm's data would be significant enough to change the size of the markets under investigation, compulsory process is used. The sensitivity of the process is quite apparent—if sensitive competitive data is not accorded confidential treatment, the agency will not have sufficient time in a 3-month investigation to compel compliance from enough firms to perform a meaningful investigation of the subject industries and product markets.

At the time the Commission institutes an investigation and notices a public hearing, the agency invites written submissions from interested persons with respect to the subject matter of the investigation. These submissions are placed in a public docket file and, therefore, are subject to rebuttal unless they comply with the requirements for confidential treatment which are provided in 19 C.F.R. 201.6. These requirements conform with the exemption in the Freedom of Information Act for confidential commercial or financial information (5 U.S.C. 552(b)(4)).

All of the factual data gathered during the course of an investigation—including the data aggregated from individual questionnaires—is put together and analyzed in a staff report to the Commission, a document which is published

[1] See also the USITC Memorandum to Subcommittee on Trade of the House, dated August 1977.; re: Alternative Bills to Provide for Judicial Review of Negative Injury Determinations.

in a version with confidential data removed as "Information obtained in the Investigation" with the opinions of the commissioners after the determination in the case. Although the "sanitized" version of the staff report is not available to interested persons until the determination is published, it is available for rebuttal only in the sense that (1) a material error by the Commission would justify a correction (19 C.F.R. 207.5(b), 42 F.R. 56504, October 26, 1977) and (2) it would be available for a challenge to the assessment of the special dumping duties (19 U.S.C. 169).

Question 8. In the case of a negative injury determination, the question of the right of and place for a judicial review of that determination is presently in question in the SCM case. Without commenting specifically on that case, what is the Commission's view on judicial review and in particular the scope of the review, the record available, and the reviewing court?

Answer. The Commission takes the position that judicial review of Commission antidumping determinations is available in the Customs Court. The standard of review is whether the Commission followed the statutory procedure, and correctly interpreted the statute. The available record consists of the staff report, and the Commission opinion and determination. The reasons for these views are set out below.

STANDARD AND SCOPE OF REVIEW

The standard of review in cases involving Commission Antidumping Act decisions should be limited to deciding whether (a) the Commission followed the statutory procedure and (b) whether the Commission has correctly interpreted the statute. The standard does not include whether the Commission's decision makes economic sense; whether it is supportable by the weight of the evidence; or even whether it is supported by "substantial evidence."

The standard is not set forth in the statute. Rather, it is evident from certain characteristics of Antidumping Act proceedings and is supported by precedent in the Customs Court and in the Court of Customs and Patent Appeals.

Under the statute, the Commission is to determine "whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States. (19 U.S.C. § 160(a) (Supp. IV 1974)). The conditions under which the Commission is to do this suggest the limited scope of review described above. The Commission only makes "such investigation as it deems necessary." (19 U.S.C. § 160(a) (Supp. IV 1974)). Thus, its determination cannot be said to be unlawful for lack of a sufficient investigation.

The Commission is required to hold a "hearing" on request and to publish "a complete statement of findings and conclusions, and the reasons or bases therefor, on all the material issues of fact or law presented." (19 U.S.C. § 160(d) (Supp. IV 1974)). This clearly implies some kind of judicial review. (S. Rep. No. 1298, 93d Cong., 2d Sess. 171 (1974).) However, the Commission's hearings are "exempt from sections 554, 555, 556, and 702 of Title 5 [of the United States Code.]" (19 U.S.C. § 160(d)(d) (Supp. IV 1974)), and the "complete statement" is to be "consistent with confidential treatment granted by the Secretary or the Commission, as the case may be, in the course of making its determination." (19 U.S.C. § 160(d)(2) (Supp. IV 1974)). Therefore, it is common for hearings to be informal; they are not necessarily limited to reliable and probative evidence; determinations may be based upon confidential facts extra the record; and the published reports, because of confidentiality, do not include specific pricing information often critical to the determination. All of this is congressionally and constitutionally sanctioned, so far as history shows. It means that the Commission's determination is not based solely on the "record." Therefore, the question of whether the Commission's decision in a given case is supported by substantial evidence in the record is impossible to answer because there is no record. This does not, incidentally, prevent the submission of the confidential "record" to the court for in camera inspection. However, we submit that no such thing was contemplated by the Congress; as best we can determine, it has never been done. Moreover, if the record were submitted in camera, the parties plaintiff would still be briefing to an unknown record.

The relationship between confidentiality and narrow review rests on three reasons. First, some data is never made public. Second, the court cannot tolerate one standard of review where the record happens to be entirely public, and

Ellis K. Orlowitz Co. v. *U.S.* 50 C.C.P.A. (Customs) 36 (1963);

another standard where it is not. Third, the case law stands for very limited review. The cases are as follows:

Kleberg & Co. v. *U.S.*, 71 F.2d 332 (C.C.P.A. 1933);

City Lumber Co. v. *U.S.*, 311 F. Supp. 340 (Cust. Ct. 1970), *aff'd.*, 457 F.2d 991 (C.C.P.A. 1972);

Imbert Imports, Inc. v. *U.S.*, 331 F. Supp. 1400 (Cust. Ct. 2d Div. App. T. 1971), *aff'd.*, 475 F2d 1189 (C.C.P.A. 1973);

F. W. Myers & Co. v. *U.S.*, 376 F. Supp. 860 (Cust. Ct. 1974).

In *Imbert Imports, Inc*, cited above, the Second Division Appellate Term, of the Customs Court stated:

"Appellant further argue [sic] that the Commission's finding is "lacking in any supportable evidence" Such contention overlooks the fact that a Tariff Commission injury investigation is not required to be "on the record", but rather is authorized to be made upon "such investigation as it [Commission] deems necessary". 19 U.S.C. § 160(a). Much of the Commission's information may be confidential and not open to public inspection or judical review. Under these circumstances, plainly the substantial evidence rule is inappropriate in reviewing injury determinations of the Tariff Commission." [2]

The court cited *Kleberg* and a law review article. It also cited (with a "*but cf.*" introductory signal) the Customs Court decision in *City Lumber Co.* v. *U.S.*, 311 F. Supp. 340 (Cust. Ct. 1970), which seemed to suggest the "substantial evidence" rule was applicable. This aspect of *City Lumber* was overturned on appeal, although the result was affirmed (457 F. 2d at 994). When the *Imbert* decision was itself appealed, the C.C.P.A. cited the "overruling" language in *City Lumber*, and said simply:

"The statute itself, 19 U.S.C. § 160(a), authorizes the Commission to base its determination upon "such investigation as it deems necessary." [475 F. 2d at 1191]

Because the language quoted from the statute in *Imbert* has been associated with a narrow scope of review since *Kleberg*, the "substantial evidence" rule is now not applicable in appeals from Antidumping Act decisions.

We have considered whether our view of the law would be different simply because a Commission decision is a "negative" Commission determination. Our view would not be different, even though the cases we have cited were all instances of review of affirmative antidumping determinations (in this respect, SCM's lawsuit is of first impression) for two reasons. First, the Congress intended to provide "equal judicial review rights for domestic producers" when it amended section 516 of the Tariff Act. Second, the history of the law in this area would suggest that, if anything, domestic manufacturers are presumed to have narrower rights of review than importers. Prior to the enactment of the antecedent of section 516 in 1922, domestic manufacturers had no standing. (H.R. Rep. No. 248, 67th Cong., 1st Sess. 26 (1921).)

The scope of review follows logically from the above. It is essentially limited to the Commission's determination, the opinion in support thereof and the Commission report. Since "evidence" does not exist in such cases, but rather "information" from various sources including but not limited to the parties at the hearing, review of the hearing record would be anomalous. Of course, we expect the court to want to look at the Commission's "record," which consists of those documents filed by private persons at the Commission's Office of the Secretary, the testimony at the hearing and exhibits accepted at the hearing. However, we would argue this is permissible scope only as it enables the court to determine whether the Commission met statutory criteria.

THE FORM OF THE PROCEEDING

The Commission has expressed a willingness to consider moving review of Antidumping Act appeals to the Court of Customs and Patent Appeals, but is not prepared to so recommend now. At present, the Commission position is that review is clearly in the Customs Court. We believe that the proceedings before the Customs Court are not intended by Congress to be a trial de novo, even though the Customs Court is a court of original jurisdiction.

It is true that 19 U.S.C. § 169 appears to provide for trial de novo, since it made protests of antidumping duty actions appealable in the same manner as

[2] 331 F. Supp. at 1405. The "Tariff Commission" was, of course, the Commission's predecessor agency.

ordinary customs duties protests.[3] (Actually, the section is somewhat ambiguous; its scope appears to be "for the purposes of" the Antidumping Act, 1921, but it appears later to be limited by its terms to affirmative cases ("the action of [the] customs officer in assessing special dumping duty". The fact is, however, that even affirmative cases have not received a real trial de novo in the Customs Court.

In *Kleeberg*, the Customs Court allowed three witnesses to be called, but their testimony seems to have been concerned with what they did in their investigation, i.e., whether the Secretary conducted an adequate investigation. In *City Lumber*, review was based on the following:

"The evidence is documentary and consists entirely of a certified record of the public proceedings before the Commission." [457 F. 2d at 933]

In *Imbert*, the court stated:

"The 'record' before us is entirely documentary, consisting of certified copies of papers filed with the United States Tariff Commission during an investigation it conducted, and the Commission's 'Determination of Likelihood of Injury.'" [475 F. 2d at 1190]

The practice of the Customs Court is to differentiate between ordinary customs duty protests—for which it provides a trial *de novo*—and antidumping appeals—for which it provides only review. In *F. W. Myers & Co.*, both the duty issue and the validity of the Secretary's antidumping determination were at issue. The court held a trial *de novo* as to the first, but as to the second, the court stated its activity was:

"Limited to determining whether the Secretary or his delegate acted within the scope of his delegated authority and correctly construed the pertinent statutory language." [376 F. Supp. at 878]

A genuine trial de novo, suggesting the possibility of examination of Commission employees or even commissioners, is totally inconsistent with the court's own view of its limited function and might hamper administration of the act.[4]

As a practical matter, it would seem that trial de novo in the antidumping context presents a difficult problem in burden of proof. If there is to be a trial, what must plaintiff prove in order to succeed? If he can only succeed by proving that the Commission acted arbitrarily or unlawfully, we do not see how anything outside the Commission report, opinion and determination could be material, let alone necessary.

Mr. VANIK. I have another question. The Federal Register of October 26, 1977 contained new regulations promulgated by the Commission concerning the Antidumping Act. Without commenting on the validity or the lack of validity thereof, I would like to ask the following questions:

One: Isn't it true that a determination of sales at less than fair value and a determination of injury are merged into a dumping finding?

Mr. CORNELL. I would ask Mr. Stein to answer those questions.

Mr. VANIK. Isn't it true that a determination of sales at less than fair value and a determination of injury are merged into a dumping finding?

Mr. STEIN. Yes, it is true.

Mr. VANIK. Isn't it the responsibility of the Secretary of the Treasury to administer dumping fines and to revoke or modify that finding?

Mr. STEIN. That is my understanding.

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[3] 19 U.S.C. § 169 (1970). This section provides as follows:

"For the purposes of sections 160 to 171 of this title, the determination of the appropriate customs officer as to the foreign market value or the constructed value, as the case may be, the purchase price, and the exporter's sales price, and the action of such customs officer in assessing special dumping duty, shall have the same force and effect and be subject to the same right of protest, under the same conditions and subject to the same limitations; the United States Customs Court, and the Court of Customs and Patent Appeals shall have the same jurisdiction, powers, and duties in connection with such appeals and protests as in the case of protests relating to customs duties under existing law."

[4] *Cf.* the dissent of Mr. Justice Brandeis in *Crowell* v. *Benson*, 285 U.S. 22, 65 (1932).

Mr. VANIK. Now, what was the statutory basis for the Commission to institute by itself on motion or at the request of a third party, an investigation to determine whether changed circumstances exist which indicate that if the dumping finding were modified or revoked, an industry in the United States would likely be injured or prevented from being established by reason of the continued importation of merchandise into the United States at less than fair value?

I cannot find any such language in the Antidumping Act.

Mr. STEIN. There is none in the Antidumping Act.

Mr. VANIK. What was the statutory basis of the Commission to institute on its own motion or at the request of the third party an investigation and so forth?

Mr. STEIN. I am sorry, Mr. Chairman. We can respond to that—I know there is a statutory basis. I am sorry that I cannot lay my hands on it right this instant.

I hope to respond in writing to that question.

[Information follows:]

Question 9. The Federal Register of October 26, 1977 contained new regulations promulgated by the Commission concerning the Antidumping Act. What is the statutory basis for the Commission to institute, on its own motion or at the request of a third party, an investigation to determine whether changed circumstances exist which indicate that if the dumping finding were modified or revoked, an industry in the United States would likely be injured or prevented from being established by reason of the continued importation of merchandise into the United States at less than fair value?

Answer. The statutory basis for the Commission to institute, either on its own motion or at the request of a third party, an investigation to review its determinations of injury under the Antidumping Act, 1921, as amended, is inherent in the Act. This authority was recognized by the Senate Committee on Finance in its Report on the Trade Act of 1974, as follows:

"Review of Agency determinations and findings.—The Antidumping Act does not contain specific provisions for the review by each agency of its individual determinations or of the findings of dumping issued by Treasury. However, both Treasury and the Commission have the authority to review, modify, or revoke their determinations. The Treasury by regulation has long exercised this function, initially and until 1954, with respect to both less-than-fair-value and injury determinations, and after 1954 with respect to its single determination, of less-than-fair-value imports. In 1954, the Commission was given the authority to make the injury determinations under the Antidumping Act, and it has continued Treasury's practice as is recently evidenced by its review of several outstanding injury determinations, one of which was an inherent part of an outstanding finding of dumping issued by the Treasury." (S. Rep. No. 93–1298, 93rd Cong., 2nd Sess. 181 (1954)).

The emphasis of the question indicates what appears to be an ambiguity in the wording of the Commission's rule. The Commission's investigation should be to determine—

"Whether changed circumstances exist which indicate that, if the dumping finding were modified or revoked, an industry in the United States would not likely be injured or prevented from being established by reason of the importation into the United States of the relevant merchandise at less than fair value.". . .

The Commission will consider making the necessary amendments to its regulations.

Further, the question appears to differentiate between (1) those review investigations instituted by the Commission upon its own motion or at the request of a third party on the one hand and (2) those instituted upon the receipt of appropriate advice by the Treasury Department on the other, since it only refers to the former.

Nevertheless, the institution by the Commission of review investigations on its own motion or at the request of a third party anticipates consultation with, and receipt of appropriate advice from, the department, even though no prior referral was received from that agency. In this fashion, the statutory bifurcation of responsibility under the Act is preserved in the Commission's procedures.

Mr. VANIK. I will give you an opportunity to respond to that in writing, but it would seem to me it might be the kind of question you might expect to arise at this hearing on antidumping in the Commission.

It would seem to me it would be one of the first questions that might come to our attention.

I have no further questions. Do you have any further questions?

Mr. STEIGER. No.

Mr. VANIK. I want to thank both of you and your staff for providing your cooperation at this hearing, and I hope that we certainly started up something in utilizing the services of the Commission in this tremendous issue of helping us provide an early warning system.

This committee will stand in recess until 1:30, at which time we will conclude our business.

[Whereupon, at 12:30 p.m., the subcommittee recessed, to reconvene at 1:30 p.m.]

AFTERNOON SESSION

Mr. VANIK. The subcommittee will be in order.

I would like at this point to insert in the record a letter which I just received from my colleagues in the U.S. Senate, Senators Birch Bayh, Howard Metzenbaum, Jennings Randolph, John Glenn, and John Heinz.

It will be entered into the record at this point without objection.

[The letter referred to follows:]

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, D.C., November 7, 1977.

HON. CHARLES A. VANIK,
Chairman, Subcommittee on Trade, Committee on Ways and Means, U.S. House of Representatives.

DEAR MR. CHAIRMAN: We are enclosing for your information details of two bills we have proposed to deal with the current crisis in the steel industry.

The Trade Procedures Reform Act in particular should be of interest to your Committee in view of the forthcoming hearings on the Antidumping Act. The bill consists of procedural reforms in that Act and other trade statutes which we believe will streamline the process of investigating complaints of unfair trade practices and provide for more effective penalties when violations are found.

We will be introducing these bills shortly and will be pressing for Senate action early next year. It is our hope that your Committee will find the proposals useful in its own work in the same direction. We would appreciate your including this information in the record of the Committee's hearings this week.

Sincerely,

BIRCH BAYH.
JOHN GLENN.
H. JOHN HEINZ III.
JENNINGS RANDOLPH.
HOWARD M. METZENBAUM.

U.S. SENATE,
COMMITTEE ON APPROPRIATIONS,
Washington, D.C., November 4, 1977.

DEAR COLLEAGUE: It is no secret that the steel industry in America is in serious trouble. During this year alone some 90,000 steelworkers are reported to have lost their jobs. We recognize that a number of factors have contributed to this situation. Most recently, the Department of the Treasury made a preliminary finding that $174 million worth of carbon steel plate was being "dumped" on the U.S. market. The Department also announced that it was proceeding to investigate an anti-dumping complaint made by U.S. Steel covering over $2 billion worth of trade.

Clearly, predatory pricing practices are a major factor contributing to the present decline of the American steel industry. As members of the Senate steel caucus working group, we are asking you to join us as original cosponsors of legislation designed to streamline the processes by which certain trade complaints are considered and to amend the Anti-dumping Act of 1921 to improve the timetable for both investigations and imposition of duties. The Trade Procedures Reform Act will make changes in the Trade Act of 1974, the Tariff Act of 1930 and the Anti-dumping Act of 1921 which, we believe, will provide more effective remedy of present unfair trade practices by foreign competitors. In addition, such improvement will encourage greater utilization by domestic firms of these remedies and enhance protection against illegal and unfair pricing policies by foreign competitors in a consistent and timely manner. A summary of this legislation is enclosed for your information.

The legislation we are introducing is an important part of the overall national commitment to get our steel industry back on its feet. This adjustment will not be easy because of the complex nature of trade matters, the relation of the U.S. economy to the world economy and the nature of the steel industry. However, we have an obligation to the American steel producing community to make positive recommendations and act as a full partner with the Administration in the formulation of a comprehensive and comprehensible industrial policy which the American people can understand and support. While other issues such as capital formation necessary for plant modernization must also be addressed, we believe the initiative outlined in this letter represents the right steps in the direction of an effective remedy to the present crisis.

If you wish to join in cosponsoring this legislation, we ask that a member of your staff contact either Bill Reinsch in Senator Heinz's office at x46324, Chris Aldridge on Senator Bayh's staff at x48745 or Ed Furtek with Senator Glenn at x43353 by Wednesday, November 9.

We look forward to hearing from you.

Sincerely,

H. JOHN HEINZ III.
JOHN GLENN.
JENNINGS RANDOLPH.
BIRCH BAYH.
HOWARD M. METZENBAUM.

SUMMARY OF TRADE PROCEDURES REFORM ACT

In general, the purpose of the bill is to streamline the processes by which certain trade complaints are considered and to amend the Antidumping Act of 1921 to improve the timetables for both investigations and imposition of duties.

A. AMENDMENTS TO TRADE ACTS

(1) Although section 201 of the Trade Act of 1974 (escape clause section) provides for a two-House Congressional override of a Presidential decision, section 203, which permits the President to revise or revoke his earlier decision, has no override provision. This amendment creates such a procedure similar to that in section 201, and in addition a) permits the President to make such a redetermination only once every twelve months, and b) provides that the Presidential determination must be made within 30 days of receiving the required advice from the International Trade Commission (ITC) and Departments of Labor and Commerce.

This amendment is particularly relevant to the pending specialty steel case.

(2) Section 301 of the Trade Act of 1974, dealing with trade discrimination cases, currently contains no time limits. This amendment would give the Special Trade representative 45 days to begin an investigation of a complaint, 6 months to finish it, and 45 days to begin hearings reviewing the STR determination. This amendment imposes no time limit on Presidential action pursuant to any STR determination.

(3) Section 303 of the Tariff Act of 1930, relating to countervailing duties, is amended by requiring that a Treasury investigation must begin within 30 days of receipt of a complaint or petition.

(4) Section 337 of the Tariff Act of 1930, relating to unfair methods of competition, is amended by requiring that any investigation begin within 30 days of receipt of a complaint.

B. AMENDMENTS TO THE ANTIDUMPING ACT OF 1921

(1) The Act is amended to require that after a tentative finding of dumping, instead of requiring a bond to cover prospective duties, the full amount of estimated dumping duties will be held in escrow pending a final determination.

(2) The Act is amended to require that after a final determination of dumping, an across-the-board assessment of duties based on the fair value data compiled during the dumping investigation be conducted rather than the current system of case-by-case assessment based on new figures.

(3) This amendment changes the Act to speed up the investigatory process by making Treasury's 3 month final determination process and the ITC's 3 month injury investigation concurrent rather than consecutive. This would cut 3 months off the current 13 month investigatory process.

(4) The Act is amended to eliminate the possibility of interim referral to the ITC during the 6 month Treasury investigatory process (section 321(c)(2)).

(5) The Act is amended to require an annual Treasury Department report of its actions to enforce the Act and the results of those actions.

U.S. SENATE,
COMMITTEE ON APPROPRIATIONS,
Washington, D.C., November 4, 1977.

DEAR COLLEAGUE: As members of the Senate steel caucus working group, we are asking you to join with us as original cosponsors of the "Buy American Act Amendments of 1977."

While we recognize that predatory pricing practices are a major factor contributing to the present decline of the American steel industry and are presntly preparing legislation which will improve the effectiveness of present antidumping laws, we also believe that ways should be explored to assist the industry and provide job security by assuring an effective level of demand. Therefore, one part of a recovery package should, we believe, involve making constructive changes in the Buy American Act of 1933.

The Buy American Act Amendments of 1977 which we will be introducing shortly will expand the present statute to state and local government agencies receiving in excess of 50 percent of federal funding for their operations. In addition, it will set a statutory definition for a domestically manufactured product. It will also establish a preference differential of not less than 15 and not more than 50 percent regulating the use of public purchases made possible by federal funds. A summary of this legislation is included for your consideration.

The recent findings by the Department of the Treasury and pursuit of other anti-dumping investigations suggest a prima facie case that foreign imports of raw and fabricated steel have eroded the home share of the domestic steel market. Had antidumping laws and other "fair trade" statutes been vigorously pursued in the first place, we might not be witnessing the present crisis in this most basic of industries.

The Buy American Act Amendments of 1977 should serve as a useful legislative vehicle to evaluate how changes in the present Act can facilitate efforts to solve the present industry-wide crisis. We have an obligation to the American steelworkers and the industry to see that the federal dollar does not inadvertently go to the purchase of a foreign steel product at an unfair and illegal price.

If you wish to join in cosponsoring this legislation, we ask that a member of your staff contact either Bill Reinsch in Senator Heinz's office at x46324 or Chris Aldridge on Senator Bayh's staff at x48745 by Wednesday, November 9.

We look forward to hearing from you.

Sincerely,

H. JOHN HEINZ III.
BIRCH BAYH.
JENNINGS RANDOLPH.

BUY AMERICAN ACT AMENDMENTS OF 1977

SUMMARY

This Bill will:

(1) Amend the 1933 "Buy America Act" to extend it to any contract, more than one-half of which is financed by appropriations, subsidies, loans or grants from, or loans insured or guaranteed by the United States or any agency or instrumentality thereof.

(2) Define an article, material or supply to have been mined, produced or manufactured in the United States if the costs of the components, mined, produced or manufactured in the United States exceeds 75 percentum of the cost of all components.

(3) Statutorily establish a preference floor of 15 percentum and a ceiling of 50 per centum of the value of the contract for articles, materials or supplies mined, produced or manufactured in the United States.

This provision of the bill will not be limited to the steel industry.

IMPACT

The importance of extending preferences to domestic materials in state and local procurements is highlighted by the partial listing of public works projects which receive substantial federal funding, but, because the procurements are handled by state and local public bodies, no preference for domestic goods is required:

Enabling statute	Fiscal year 1977 appropriations	Projects
Public Works Development Act of 1976	$2,500,000,000	Municipal office buildings, court houses, libraries, detention facilities, health centers, waste water treatment, and similar public facilities to be owned by State and local public bodies.
Federal aid to highways	$6,600,000,000	Interstate and State highway construction.
Urban mass transportation fund	$1,500,000,000	Mass transit.
Federal Housing Acts of 1949 and 1950	Over $1,000,000,000	Urban renewal projects and housing for the elderly and disadvantaged.
Housing and Urban Development Act of 1965	Over $350,000,000	Water and sewage facilities.
Demonstration Cities and Metropolitan Development Act of 1966.	Over $575,000,000	Model cities/urban renewal construction.

Mr. VANIK. The first witnesses this afternoon are from the American Iron and Steel Institute: Mr. Dominic King, assistant general counsel, United States Steel Corp., accompanied by Robert Peabody, general counsel and executive vice president of the American Iron & Steel Institute.

We have your statements. You may proceed. I have the statement of Mr. King. We will be happy to hear from you.

STATEMENT OF DOMINIC B. KING, ASSISTANT GENERAL COUNSEL, U.S. STEEL CORP., ON BEHALF OF THE AMERICAN IRON & STEEL INSTITUTE, ACCOMPANIED BY ROBERT PEABODY, GENERAL COUNSEL AND EXECUTIVE VICE PRESIDENT

Mr. KING. Thank you, Mr. Chairman.

I am Dominic King, assistant general counsel for the United States Steel Corp. With me is Robert Peabody, general counsel of the American Iron & Steel Institute. We are here in the capacity of representing the American Iron & Steel Institute, which is composed of 63 member companies and which constitute approximately 95 percent of the American steel production.

Mr. Chairman, we very much appreciate your holding these hearings and I want to express our gratitude for what I consider to be the very searching inquiries that were made of the Government officials charged with the administration of the Antidumping Act that we were privileged to sit through this morning.

Rather than going through the prepared statement, Mr. Chairman, we would like the opportunity of submitting for the record before the record is closed a detailed statement of some of the reforms

in the administration of the act which I would like to address myself to very briefly and then answer any of your questions.

Mr. VANIK. Without objection, your full statement will be submitted in the record. You may proceed as you see fit.

Mr. KING. Thank you.

[The prepared statement follows:]

STATEMENT OF DOMINIC B. KING, ASSISTANT GENERAL COUNSEL, UNITED STATES STEEL CORP., ON BEHALF OF THE AMERICAN IRON & STEEL INSTITUTE

Mr. Chairman, my name is Dominic King, Assistant General Counsel, U.S. Steel Corporation. I am accompanied by Mr. Robert Peabody, General Counsel and Executive Vice President, American Iron and Steel Institute. I am appearing today on behalf of the American Iron and Steel Insttitue whose 63 member companies constitute approximately 95% of American steel production.

Before proceeding further, I wish to express our appreciation to the Chairman of this Subcommittee for your involvement and active interest in the steel trade problem, as evidenced by this and other hearings. It is a difficult problem for us and for the country. We credit the Subcommittee for its efforts in highlighting the problem and supporting efforts to effect a solution.

As requested by the Committee our oral presentation will not exceed three minutes. However, we shall submit for the record a more detailed statement of our views. At the outset, we wish to emphasize that the Antidumping Act of 1921, as amended, can be a most effective statute for the rectification of unfair trade practices. We have only one caveat—the Act must be properly administered. Indeed, we feel there is room for vast improvement in the prompt and vigorous administration of the Act.

Under present Treasury administrative procedures withholding of appraisement on imports occurs on or after the date the Treasury announces its determination of sales at less than fair value. Thus, the Treasury may take six or nine months to determine sales at less than fair value and only then ordinarily does it withhold appraisement on imports. Accordingly, imports which enter the U.S. market after the announcement of a full scale investigation, but before the six or nine months have elapsed, ordinarily escape any dumping duties even if they are sold at less than fair value.

The effect of such an administrative procedure is to give an affirmative signal to foreign producers to continue sales at less than fair value after the full scale investigation and even to expand their sales in the U.S. market at dumped prices, if they can clear their products through U.S. Customs before the six or nine months have elapsed.

Section 201(b) of the Antidumping Act of 1921, as amended, permits the Treasury to withhold appraisement on imports as much as 120 days prior to the date a full scale investigation is initiated. Under this authority, the Treasury is authorized by law to withhold appraisement on imported steel on and after the date of notice of a full scale investigation of a steel dumping complaint, rather than a date six or nine months later. We urge this Committee to support such a change in administrative procedure and the Treasury to adopt such a practice since it is consistent with the existing law. This approach would deter steel importers from importing at less than fair value while dumping proceedings are underway, and should immediately be put into effect.

This point is exceedingly important to those domestic steel producers including U.S. Steel Corporation, National Steel Corporation, and others who have initiated or may be affected by pending dumping complaints.

One other comment relates to the constructed cost provisions added in 1974. This appears to be a sensible and meaningful addition to the act. So far our experience under it is limited. We have high hopes that Treasury will apply it in the spirit in which it was conceived by the Congress.

Thank you Mr. Chairman.

Mr. KING. Mr. Chairman, I have represented United States Steel Corp. in antidumping cases for perhaps 12 years and I would like to relate my experience in the administration of the Antidumping Act with respect to many of the questions that were asked of the Government officials this morning.

You quite rightly perceived, I believe, that the present members of the Treasury Department particularly inherit the transgressions of previous administrations, if I may say so, and this is without any partisan—it didn't matter whether it was a Republican or Democratic administration.

One of the things that I would like to start with is the question of the alert of the Treasury and Customs Bureau to the question of dumping and the unwillingness of them to prosecute these cases themselves.

Mr. Chairman, back in 1969, I believe it was, we first approached the Treasury Department and the Bureau of Customs with a specific proposal in which they would monitor imports that were taking, say, above 5 percent of the market where it was quite clear to everyone concerned that there was actual or threatened danger to that industry whereby they would install a computer program in which they would set forth, Mr. Chairman, the home market price as well as the export price. They would look to see whether or not the prices appeared to be reasonable on their face and have a computer program which would kick out evidence of dumping. Since the Treasury Department itself advised us that they were unwilling at that time to initiate a dumping proposal themselves, we suggested that they could at least alert the industries involved of the fact that there were indications of dumping and provide them with the evidence that was a matter of public record that indicated dumping might be taking place.

Indeed, they could formalize this by means of regulations that would require every 3 months or so they publish what we called an "antidumping alert" for industries that were being faced with ever-increasing imports.

We met with them on several occasions and if it would be of interest to the committee, at the time we submit the more detailed statement, I would like to supply you with the letters that we exchanged with the Treasury and the Customs Bureau at that time recommending this procedure to be followed and that there be installed a computer program that would more clearly alert the industries to the fact that this was occurring and relieve the industries of much of the burden imposed upon them under the present administration of the act whereby it is necessary to go and determine the home market prices, determine the comparability of the products, try to find out what the export prices are; and then in the case of the United States Steel Corp., Mr. Chairman, this is the nonconfidential submission which we recently filed, which they referred to, and the confidential submissions are perhaps 18 inches of material and required well over a year of intensive effort and substantial cost in order to accumulate the necessary information.

That is a burden that I think can be better obviated by more effective administration of the antidumping statute and I would suggest that if the Treasury remains reluctant to themselves process antidumping as it occurs, that they might well take another look at the suggestions we made to them as to publishing the information that at least comes to their attention of dumping and make it known to the industries involved who then at least have some prima facie evidence on which they could pursue the matter.

I certainly welcomed the actions of the committee this morning with regard to the British Steel Corp. I think that that is very much to be commended.

The other problems that we have experienced with the administration of the antidumping statute not only come to this question of how do you find out that dumping is occurring, but then with the rigors of complying with the regulations in filing an acceptable dumping complaint. I think that this has been compounded by one provision put into the 1974 act that requires the Treasury to look to see whether or not there is evidence of injury or threat of injury before they will proceed.

This has resulted in Treasury setting forth the long series of regulations on what is required of the complainant in setting forth in his complaint to the Treasury which, after all, has the basic jurisdiction of determining fair value sales, a great deal of information with regard to the question of injury. I think this could be somewhat simplified, Mr. Chairman, and that those regulations should be reevaluated by the Treasury in order to avoid any needless requirements that they impose on the complainants.

Once the complaint is filed, then we have this question of what happens in the interim before there is a tentative affirmative determination and a withholding of appraisement.

Under the statute the Treasury Department could statutorily amend their regulations to provide, I think, a remedy that has been suggested to them by us at least 8 years ago and that is that it should be in the regulations that once a finding is made that there is evidence or reason to believe that there is evidence of dumping and withholding of appraisement notice is issued, the withholding of appraisement should be effective on and after the date either of the filing of the complaint or on and after the date of filing the notice that Treasury's going ahead with the preliminary investigation.

This would stop the 6- or 7-month period of time that an importer has to continue his dumping before he has to pay any penalty. Those are free months of dumping the way they administer it today.

Mr. VANIK. They come in without any strings attached to them?

Mr. KING. That is correct. We suggest that this recommendation would give them a method for dealing with this situation. They only have to amend the regulations to make them conform with the statute.

We have also experienced in some of the cases where we have been successful, and have won, the long delay in assessing or actually collecting the dumping duties because each new entry that comes in after a dumping finding is made constitutes, if you will, an entirely new dumping proceeding whereby the importers invariably—and the Government confirmed it, in 100 percent of all the imports that come in thereafter—they reassert the fact that there have been changes in the price they are selling in their home market or in export, or there have been changes in the differences in circumstances of sale, different commissions, different product being sold, product differentiation, and these adjudications are made by the Customs Bureau without any open hearing or without the complainant or anyone in Congress in the oversight capacity really knowing what is happening on an entry-by-entry basis.

Again, Mr. Chairman, we have made specfic proposals to both the Treasury and to Customs that they ought to at least amend their regulations on the enforcement aspect of the dumping complaint once found, in order to permit the complainant at least to be notified when they are going to make a change that reduces the original margin of

dumping so that there can be an opportunity to be heard to assess the validity, the accuracy and the truthfulness, if you will, of the assertions by the exporters and importers as to either the changes in prices or the changes in the differences in circumstances of sale.

This again I would commend to the committee as something that would be done to better enforce these entries and I think it would help to speed up the collection as well.

Another suggestion that I would make is Treasury, instead of giving them 3 or 4 years without having to pay the additional duties whereby they are able to post bond for a rather modest outlay, that instead of that, once the dumping duty is known at the outset and the margin, that at least for a period of time, say 6 months, that that be collected and, if necessary, be retained in an escrow account in the Treasury so at least our Government has the use of the money rather than the importer and if it is determined at a subsequent time there has been an overassessment of the duties—this happens all the time on duties, the importers are very alert to their own rights on all classifications and assessments of duties—it would have, in fact, paid more of the duty than they should have.

Mr. VANIK. What would happen if they overpaid? They could claim interest for that, could they not?

Mr. KING. I think they could claim interest on that, but I would rather the Government of the United States had the money and importers did not have this free ride.

Mr. VANIK. How about the issue that it is a cheap loan on the duty under the bond system?

You do agree that this whole thing could be practically computerized at the collector's level where there might be a reference price clocked into the computer on various classifications that are under examination or under question. And the minute an invoice came in that was more than a percentage point or some such distance away from the reference, it would trigger a report out that would come out automatically on the item coming in?

Mr. KING. Yes, Mr. Chairman.

Mr. VANIK. Does that seem too complex to you?

Mr. KING. No, indeed it didn't at the time we proposed it to them and it still doesn't to this date.

Mr. VANIK. I didn't know you proposed it, but I am on the same track. I felt the same way about it. I felt the imports that are troublesome and unfair should be spotted sooner than they are given this identity and the sooner the practice is stopped or restrained, the more effective the procedure. Otherwise, it loses its efficacy.

Do you have any questions, Mr. Frenzel?

Mr. FRENZEL. Mr. Chairman, first of all, I apologize for my tardiness and I thank the gentleman for his execellent testimony.

In the matter that you were just discussing I am a little concerned about the due process problem. When we revised the custom law this year, one of our greatest concerns, at least in the House-passed bill, was that the Customs and Treasury Departments had too much latitude in determining fees, penalties, assessments, and duties on their own initiative without due process.

It would worry me a little bit if we were to collect excess or extra duties before the person from whom they are taken has a chance to go

through the process and prove whether he is, in fact, guilty or whether those duties are actually owed.

Mr. KING. Well, Mr. Congressman, I did not suggest that and that was not the proposal that we had made to the Treasury.

Our proposal was only after there was a finding of dumping, namely, that there was a finding by the Treasury Department that there were sales at less than fair value, after the Tariff Commission had found that there was injury and then there was an imposition of a dumping duty, at that point in time would be determined what the range of dumping duties are.

What we were suggesting to the Treasury to simplify the administration of the act was that for a period of time thereafter that that margin be collected on the entries as they came in and that it be reviewed, of course, periodically; and where the importer was able to show satisfactorily to them, say, every 3 months or so that there had been some changes either in the pricing at home or abroad or their cost situation changes or differences in circumstances of sale, that there then would be the opportunity for the Treasury to consider this, and if at that time there is in fact going to be a reduction of the first determined margin of dumping, that at least the complainant under his due process, who is the industry being injured, at least can be alerted to the fact that this is what is being clamied and contemplated by the Treasury, and before there is adjustment downward of the dumping margin, we had suggested as an idea that it would help both the Treasury and certainly the industry to have the opportunity that before this change were made, they at least have the opportunity to be heard and to review the information and provide whatever input they could.

I was not suggesting that there be this abrogation of anyone's rights. Indeed, I think, as we were listening to the testimony of the Treasury and to the limited number of people who are assigned in this area, any thought that there was going to be an abrogation of due process, I think, is dispelled by the mere fact that they have so few people to do such a very large job.

Mr. FRENZEL. That makes lack of due process even worse, if in fact it ever exists.

Thank you very much for your clarification.

Mr. VANIK. Thank you very much. We will await your statement for the record.

Thank you for your testimony.

Our next witness will be Roger Regelbrugge, president of Korf Industries.

STATEMENT OF ROGER R. REGELBRUGGE, PRESIDENT AND CHIEF EXECUTIVE OFFICER, KORF INDUSTRIES, INC., CHARLOTTE, N.C., ACCOMPANIED BY SCOTT LOWDEN, VICE PRESIDENT AND GENERAL COUNSEL; AND CHARLES O. VERRILL AND BART S. FISHER, COUNSELS

Mr. REGELBRUGGE. Thank you, Mr. Chairman.

I am Roger Regelbrugge, and I am president and chief executive officer of Korf Industries. We are involved in making steel. To my left is Scott Lowden, vice president and general counsel of our corpora-

tion; to my right, Mr. Charles Verrill and Mr. Bart Fisher, of Patton, Boggs & Blow.

We have a prepared statement which has been given to the staff.

Mr. VANIK. Your statement will be included in the record as submitted. We would appreciate your summarizing it so we can move to the questions.

Mr. REGELBRUGGE. Thank you.

We have two subsidiaries in the steel business, Georgetown Steel Corp. and Georgetown-Texas Steel Corp. We employ about 3,300 people in those subsidiaries and make about a million tons of steel, mostly wire rod, per year.

We believe we have among the most efficient and technologically farthest advanced steel mills for that product, wire rod, in the world. Imports of wire rod into the United States amount to 50 percent of U.S. consumption and I would like to stress that point because within the steel industry there are significant differences by the types of product as to the percentage of imports.

Early in September in spite of what we believe to be our advanced technological manufacturing position, we found it necessary to file antiduming petitions against several French importers and the results of the preliminary margins of 56 percent have been found. Needless to say, to ourselves and other people in our kind of business, injury would be substantial with those dumping margins.

Our objective as a corporation is very simple. We know how to compete and we are ready to compete. We are not too concerned about getting special government protection, but what we are concerned about is getting the enforcement of the laws of the land, in getting that enforcement as early as it can possibly be made available.

We fully support the suggestions that have been made a few minutes ago by the American Iron and Steel Institute in connection with potential retroactivity of dumping-related duties and, as we heard earlier, that is an option the Treasury Department has presently without requiring any additional authority. This is an option that they could exercise today. We believe it should be exercised.

We are very much concerned about the talk of rationalizing the international markets or about bilateral or multilateral arrangements which would create quotas, voluntary restraint agreements or the like.

We believe that we compete with a number of companies that are government owned or very strongly government supported. These bilateral or multilateral agreements, if they came into being, would, in fact, be a step in the direction of government control of our industry in the United States and, in fact, of nationalization of the steel industry worldwide on a gradual basis.

This morning, Mr. Chairman, you have brought up some issues which perhaps point at some real basic problems in the way the present laws are being administered or applied. It is costly, burdensome and time-consuming for a company such as ours to find all the evidence required in home markets of importing violators and then to find the proof and demonstrate that dumping is, in fact, occurring.

But even when the Treasury Department finds that such action is dumping, only those companies that were cited in our complaint are then prevented from continuing that practice or at least they are subject to these duties. But every other importer could continue to import at the same prices or lower, and unless he was specifically also men-

tioned in a similar complaint that had been successfully handled, there would be no effect on him from that first antidumping complaint.

Your suggestion this morning, or your example, Mr. Chairman, of British Steel Corp. selling carbon plate $40 below the Japanese dumping price level is an illustration. British Steel under the law of this land in the way it is applied is allowed to continue to do that if there is nobody who brings a complaint against them, even though the Japanese have already been found guilty of dumping.

It would be our recommendation that once in a major product category dumping has been found by the Treasury Department, that such product category immediately would be——

Mr. VANIK. Apply to everybody?

Mr. REGELBRUGGE [continuing]. Would be put on the early warning list you have talked about at least with clear indications whereby no additional cases would be required, no additional burdensome and costly cases by the manufacturers such as ourselves, but that the remedy could, in fact, be across the board for that product category.

And while we are not now talking about remedy in terms of duties to all importers, what we are talking about is that through that dumping margin be established by the Treasury Department a price level below which imports automatically become suspect, and it would be the Treasury Department's requirements or function to initiate investigations on its own whenever those price levels are violated. That is a recommendation which we would like put into the record.

We are somewhat concerned, Mr. Chairman, this morning at one time you mentioned that perhaps the Treasury Department or the International Trade Commission could drop or be instrumental in having dropped all antidumping cases pending.

We are very much concerned about that because, as far as we are concerned, that is what the Europeans and Japanese would like to arrange with our Government. In my own personal estimation—and I am not a lawyer—I believe such an arrangement would be against the law of the land and we should do everything we could to make sure that our rights are safeguarded and that we pursue our cases.

Mr. VANIK. The point that I wanted to make—I don't know whether I made it clear or not—but I felt there was just too much discretion in Treasury. Under present law they could drop those cases any time they felt like it.

Mr. REGELBRUGGE. This is of great concern to us.

Mr. VANIK. Without notifying anybody, without doing anything more about it. That is precisely what got us into difficulty on the television problem.

Mr. REGELBRUGGE. It is also precisely what the Europeans and Japanese expect we will do one of these days. So it is of great concern to the industry.

Mr. Chairman, with this I think I will stop my part of the presentation and we are prepared to answer questions if there are any.

[The prepared statement follows:]

STATEMENT OF ROGER R. REGELBRUGGE, PRESIDENT AND CHIEF EXECUTIVE OFFICER, KORF INDUSTRIES, INC.

My name is Roger R. Regelbrugge. I am President and Chief Executive Officer of Korf Industries, Inc., One NCNB Plaza, Charlotte, North Carolina. I am here to testify on behalf of my company in connection with the importation of low

carbon wire rod at less than fair value and to describe some of the activities which led to our filing of claims of dumping before the Treasury Department.

Korf Industries is the parent company of several steel-making and steel-associated subsidiaries operating within the United States. Our combined companies employ approximately 3,500 persons. We own two steel mills, one located in Georgetown, South Carolina, the other in Beaumont, Texas. These facilities, the last of which was only recently completed, are generally recognized as among the most modern, cost efficient mills of their kind in the world. The technology we have developed in our own operations is advanced to the point where foreign and domestic producers seek our technical assistance and participate in our operations training programs.

Our labor relations are good. Our management style is aggressive. And we know how to compete. Nevertheless, in early September of this year we felt obliged to bring a claim under the Antidumping Act of 1921 charging French importers of low carbon wire rod with violations of that statute based upon a conscious and sustained effort on their part to overproduce and to sell the product of their excess capacity at less than fair value in the United States. Shortly after our claim, U.S. Steel filed its more celebrated action against Japanese importers. Then, encouraged by some of the preliminary rulings of the Treasury Department, several other domestic steel producers followed suit.

Because of our business associations we believe we can speak with some authority about the nature of the steel industries in Europe and other parts of the world, their origin and the motivation governing their market behavior. We hope that our message will reach those for whom free trade is the principal objective of international commerce, because our company shares that objective.

Fair competitition is the cornerstone of any viable philosophy of free trade. All of us know that our principle trading partners in Europe and Japan began the postwar era at some substantial economic disadvantage. With few exceptions, governments found themselves obliged to finance and support large segments of their basic industries. Steel was perhaps the key industry in this respect and, for reasons which need no explanation, the postwar reconstruction of the steel industry became a focal point of national attention and a bellwether of economic recovery.

In Europe, the visibility of the steel industry and its high labor content has attracted government intervention and rationalization of production and pricing to an extent which would not be easily understood by the American businessman operating domestically. Supply has substantially exceeded the demand for steel in European markets since early 1975, and it is perfectly natural in that economic environment that governments, many of which own substantial sectors of the industry, should come to their aid. Efforts by individual nations of the Common Market, however, were fragmented and by December 1976, representatives of the European Economic Community developed the Simonet Plan for the purpose of monitoring and rationalizing production and other industry practices by producers in each member state. The Simonet Plan was soon found inadequate to cope with the developing steel crisis. In April of 1977, the Davignon Plan was instituted to "rationalize" or "fix" minimum prices for steel products sold with the EEC.

Each of the distinguished members of the steel industry present at this hearing knows how bleak his future would be if he were caught "rationalizing" prices with his counterpart in a competitive company in the United States.

Postwar dependence of the European steel industry on government protection has so altered the economics of marketing and production that many of the assumptions of supply and demand and cost efficiency which could be made confidently within our domestic market do not apply to import competition. Foreign producers can fix prices to subsidize dumping in the United States. They can maintain uneconomically high rates of production while dumping their overcapacity in the United States. The result is to maintain a high level of employment in the home country while displacing American steelworkers whose companies must respond to lower product demand. Such foreign producers do not suffer shutdowns, writeoffs or bankruptcy for their mistakes or for their lack of cost-price efficiency. No one in the steel industry would seriously contend that Britian's state-owned enterprises are transporting their product across oceans and competing in world markets by virtue of their cost efficiency.

Suggestions were recently made at a meeting of the International Iron and Steel Institute in Rome to the effect that European producers would look favorably upon the negotiation of restrictions on quantity of steel entering the United

Sates from Europe. Once again, this non-market solution, negotiated by and between governments seems a natural solution for European producers who would like to rationalize international markets just as they rationalize their own. That proposal is clearly not appropriate for our industry.

Instead, we request only the vigorous application of laws the enforcement of which the jurisdiction of the Treasury Department. Our small company has suffered substantial injury for a sustained period of time from importers who cannot conceivably justify the prices at which they are selling in the United States. Preliminary investigation by the Treasury Department has shown evidence of dumping at margins in excess of 56 percent. Our company has filed antidumping claims against French importers. We will file additional claims against importers from other nations shortly. Such importers, coming primarily from the United Kingdom, Brazil, Canada, South Africa, Mexico and Eastern Europe currently occupy more than fifty percent of our market for low carbon wire rod. Their activities, guided as they are by political rather than economically justified objectives, have severely threatened the continued viability of domestic production of this product. We believe we can demonstrate the elements of dumping and the severity of economic injury necessary to bring our dumping laws to bear on these violators. In addition, we are seriously considering the preparation of private treble damage actions under the Predatory Antidumping Act of 1916 as was done in a pending case brought by Zenith against Japanese importers of television sets.

We urge the Treasury Department to take the initiatives available to them under Section 201(b) of the Antidumping Act of 1921. It is clear that Treasury has the statutory power to apply special dumping duties retroactively for a period of up to 120 days prior to the date on which a full scale investigation is initiated. In practice, the retroactive application of sanctions has never been used. As a result, the party claiming injury as the result of dumping must wait for periods up to ten months after instituting its claim before relief can be granted. Since such relief is not retroactive, the importer against whom the claim was made can continue to dump products with impunity even after the preliminary determination is made by Treasury to proceed with a full investigation. We believe that in the circumstances now existing in the steel industry, sufficient notice has been given ot importers who would dump their products in the United States markets that sanctions should apply against violations occurring during the pendency of an investigation.

Mr. VANIK. The other thing I was concerned about is as we get to the automobile cases where the dollar amount is such a tremendous sum that Treasury made a political decision to just drop it. We have to establish procedures that will be clear-cut, and they will follow through, and there will be a regular format in terms of whether they are closed or whether they remain open. I didn't intend to suggest that we would be dropping those cases. I wanted to have a clear, understandable procedure that would indicate when a case is closed, what happens to it if it isn't closed, and what the proceedings should be to dispense with the matter so we could clear the decks for further and more vital decisions coming onstream.

Mr. Frenzel, do you have any questions?

Mr. FRENZEL. No, I want to thank Mr. Regelbrugge for his testimony and I simply would ask this question: Is all the steel that you produce for the domestic market?

Mr. REGELBRUGGE. We produce, as I said, about 1 million tons of steel per year, and we sell practically all of that in the domestic market. It has happened, however, that we have exported as many as 30,000, 40,000, 50,000 tons of steel out of this country, mostly into Latin American countries when that happens.

Mr. FRENZEL. What are you making, rebars?

Mr. REGELBRUGGE. No, our primary product is wire rod, low and high carbon. We make some rebar, but primarily we are in the wire rod area.

Mr. FRENZEL. Thank you very much, sir.

Mr. VANIK. Let me ask you this: In the preparation of your Georgetown case, in a case like this, it came as a tremendous cost to you and it really involves sending people to all the foreign countries pretty much.

Mr. REGELBRUGGE. That is exactly right.

Mr. VANIK. To get information they get on a private citizen basis. How do they get their information?

I am trying to visualize myself in this as being sent to a country abroad to get information on an antidumping case.

Where would you get the information?

Mr. REGELBRUGGE. Well, Mr. Chairman, it is almost an impossible task.

In fact, it is even difficult in the United States because once we try to illustrate or get evidence that importers have in fact sold at these very low prices in this country, some of the people who buy from these importers, bona fide customers of these importers, do not really want their case or their paperwork brought into the controversy.

Mr. VANIK. Into the litigation, no; they don't want to become parties.

Mr. REGELBRUGGE. Right. So, all the more so in the country of origin of the product, it is very difficult.

Mr. VANIK. Say you send a team abroad, how would they proceed?

I am trying to visualize how they would get together and establish a case on foreign production.

Mr. REGELBRUGGE. Our general counsel who supervised getting the facts in Europe on the first one would like to answer that.

Mr. LOWDEN. Actually, I would like to talk about what we did and why it was a little easier than the normal case would be.

In this particular case, we were looking at French importers of wire rod. The French being members of the Common Market are subject to what they call the Davignon plan which is a plan which would be considered in the United States to be price fixing.

Mr. VANIK. Minimum price fixing in the market.

Mr. LOWDEN. That is exactly right and that requires reporting to the EEC the price levels at which they are selling, on a regular basis. So, we are fairly fortunate in being able to go to Brussels through corresponding law firms and get the information directly out of Brussels as to what the reports were since the reports were public.

So, in that particular case it was probably considerably easier than we would face if we went to a country like Brazil or some of the other countries which are not associated with the Common Market and do not have similar reports.

In fact——

Mr. VANIK. And you wouldn't know if the reports of the Common Market had not been published.

Mr. LOWDEN. I think we would have had a considerably more difficult time.

That is one of the severe problems with private investigations to initiate an antidumping suit. It is one that we face now because the only dumpers in the United States are not European, although they are substantially a part of our particular product market.

We have been looking at Brazilians, we have been looking at even Canadians, looking at the Mexicans, and we would virtually have to go through the entire range of every hemisphere to cover the dumpers that have been acting in the United States in our product market to a substantial degree.

Mr. REGELBRUGGE. There is no question that the price erosion that has been caused by this price activity in the last couple of years is really a catastrophic circumstance.

Mr. VANIK. Let me ask you this: The Davignon plan sets a minimum price, doesn't it?

Mr. REGELBRUGGE. Right.

Mr. VANIK. Let me ask you one question: Would the British steel be above or below that minimum price?

It would seem to me——

Mr. REGELBRUGGE. The steel price that you have talked about is way below that minimum price.

Mr. VANIK. Here is an obvious situation, the Davignon plan sets a minimum price. It is a published price for the Common Market, published in Brussels.

If we have steel here that appears at a lower price and to which you have to add transportation, it would seem to me that right on the face of it, it is just an obvious situation that nobody ought to do anything at Treasury; they ought to move right in.

So, here this price is published; isn't it?

Mr. REGELBRUGGE. That is right.

Mr. VANIK. In the items you stated in the British import, the items are all categorized so you can tell by that category what the price is in the Common Market?

Mr. LOWDEN. In the Common Market, yes.

Mr. REGELBRUGGE. This is how in our case a 56-percent dumping margin is established. Just think, 56-percent market differential.

Mr. VANIK. Could you provide for the record or tell us how we could just determine the difference between the Davignon plan for steel in the Common Market and how does it compare with what we have put in the record this morning on the British steel case?

Mr. LOWDEN. It is about a $168 per metric ton difference or dumping margin.

Mr. VANIK. Over the EEC price?

Mr. LOWDEN. The home market price required by the EEC, which was reported by the French to the EEC is $280, or $168 over the U.S. domestic price.

Mr. VANIK. As far as European steel, the Davignon plan provides a reference price, doesn't it?

Mr. REGELBRUGGE. That is right.

Mr. VANIK. A perfectly valid reference price.

Mr. VERRILL. In the complaint in the *Georgetown* case, which we would be happy to furnish with the exception of the confidential portions, there is a complete description of the method whereby the Davignon plan works, a description of the six products for which minimum reference price has been established; and also a statement which we have found in recent European community publications to the ef-

fect that producers of some 95 percent of the steel produced in the European community had agreed to abide by these minimum reference prices.

We can get this for you very promptly.

Mr. VANIK. But not everybody has to abide by it. It is possible some could bring stel here at a lower price?

Mr. VERRILL. They are not mandatory; no. We believe it to be an agreement presumably by which the parties agree to abide by these prices and we expect they do in their own market.

Mr. VANIK. Thank you very much.

Are there any more questions?

Mr. FRENZEL. No, thank you, Mr. Chairman.

Mr. VANIK. The next witness will be Mr. William Knoell of the Cyclops Corp.

STATEMENT OF WILLIAM H. KNOELL, PRESIDENT, CYCLOPS CORP., ACCOMPANIED BY DONALD E. de KIEFFER, COUNSEL

Mr. VANIK. We are happy to have you with us. I would suggest that we have your statement, so you may read it or summarize from it.

Mr. KNOELL. I will run through it very quickly in summary fashion.

First, I am Bill Knoell, president and chief executive officer of the Cyclops Corp.

We are a steel company headquartered in Pittsburgh, ranked around 11th or 12th in size.

Of course, I have ben involved in the specialty steel cases since we have a significant amount of specialty steel in our mix, and as a result I am very acutely aware of the import problem and the impact it is having.

These products have been sold at prices which we consider to be dumping.

The issues I would like to deal with are broader than we have been talking about this morning, Mr. Chairman.

Three weeks ago President Carter promised the industry that he would begin to vigorously enforce the acts and this offers a lot of promise.

But if you look back at the history of the dumping laws as you have done this morning, somehow you have a feeling it is an empty promise.

Let me just take a minute and run back through the history of this law. As you know, the first dumping act was back in 1916. It offered injured American industries the opportunity such as is under the antitrust laws to bring a treble damage suit. The problem was that you had to show malice on the part of the foreign exporter.

The problems encountered with that were such that in 60 years we have only had three such cases. In 1921 they recognized the problems inherent in the 1916 act and we have the act of 1921, which is essentially the act we are talking about today.

I would like to make the point that the basic concept of our antidumping laws is over half a century old, and it has not been changed substantially.

There were changes in the 1974 act, but what I want you to focus on is the enormous change that has taken place in those 50 to 60 years.

We have gone through the deepest depression in our history, the worst war, international trade has increased 4,000 percent, we have over 100 new nations, and the most important thing that has happened is that the rules of the road have changed.

We have no longer countries operating in a free market economy on the comparative advantage.

In 1977 we are dealing with economies that are government-dominated and much different. Most of the major trading nations and almost all the developing nations have rejected the law of comparative advantage. Social and political goals have replaced economics as the motivation behind trade.

Other countries insist upon full employment. They will sell products at a loss. Government ownership and subsidization of basic industries has become a rule, and governments answer to the voters, not to the stockohlders.

The profit motivations become secondary.

Thus, the basic assumptions under which these acts were passed 60 years ago are no longer relevant to the trade. I think that that is one of the big problems that we have in trying to deal with it today.

Let me deal with what I consider three fundamental weaknesses and these are beyond procedure.

While there is some recognition in the act of the possible existence of what are referred to as nonmarket economies, this has been interpreted to be limited to Communist countries.

There is no recognition at all of the possibility that there can be partial nonmarket economies, that is, they can take a basic industry and operate it on the basis other than a true market economy.

There has been much discussion of British steel. I think we all would say that fundamentally the British economy is a market economy, but the steel industry is not.

Second, it seems to me, and this is an important point, that the act has to be given some sort of teeth. You know, it is incredible there is no penalty if you violate the law.

There is no incentive on the part of the foreign producer not to dump. If he gets caught, all he is told is he "better comply from now on."

This creates a very serious problem because frequently when you bring a dumping action you must proceed against a particular country and a particular product, and what happens is a shifting of the product.

You bring dumping in one country, you are successful, the trade shifts to another country.

Another country is willing to step in and fill the gap because they see no threat at the end of the action if they take it.

What we need is to tell those who are going to engage in these practices that they have to do so at some peril.

There should be fines, penalties involved, there should be a method for the U.S. industry that the injured could proceed against these predatory practices to recover damages such as the case when we proceed against a conspirator in the domestic market.

Then there is one other basic concern that I have as I look at the law, and that is that continuing sales below cost should become a per se violation.

By "cost" I mean the total cost as would be constructed in a market economy.

Let's look for a moment at the procedural problems which you have been talking about this morning in your inquiries.

Antidumping proceedings provide for secret evidence, no cross-examination, secret witnesses, no discovery of evidence, no depositions, no interrogatories, no adverse hearings, no trial.

It seems to me some of the problems that were alluded to this morning and the burden the Treasury has could be solved if indeed the complainant had to come in and present his case and he was confronted before them by the foreign producer with counterevidence.

The problem now is they take on the investigation on their own and as you have discussed as the morning wore on, there is no opportunity for the industry involved to become involved.

There is a problem involved that the Treasury can expand its investigation to include companies and products that you never complain about.

In fact, they can turn out averaging the results of a company that is dumping, a product that is being dumped with others you have not complained of and say on averaging the products coming in there is no dumping.

Just to end my comments quickly, let me run through a series of procedural changes in addition to the basic concepts that I covered earlier that I think need some attention.

The counsel for all parties should be permitted to see the evidence gathered in the course of the investigation and fully participate in the proceedings.

I think this would not only open the hearings, but that it would expedite the handling of some of the problems. The burden Treasury now has in presenting the case could to some extent be borne by the complaining party, and the opposition would be there to counter the answers.

There could be an open hearing.

After an investigation is launched, the goods which are alleged to be dumped should be admitted only under bond so there is some penalty during the period of investigation once there has been a preliminary finding.

Again, the procedures should be shortened.

I think that has been dealt with adequately. The averaging of the products should be stopped.

Outstanding dumping findings should be investigated on an ongoing basis.

It seems to me that one thing you could do would be to have the Treasury and the ITC report to the Congress on a regular basis concerning their enforcement of the act.

Finally, I think that we should provide that refusal of offshore producers to cooperate would result in an automatic finding of dumping against them.

Thank you, Mr. Chairman, for the opportunity of presenting what I consider to be a very serious problem for our industry overall.

Mr. VANIK. You have given us some very, very fine testimony.

I am going to try to see that we direct our attention or the attention of everyone who needs to know the recommendations you made.

[The prepared statement follows:]

STATEMENT OF WILLIAM H. KNOELL, PRESIDENT, CYCLOPS CORP.

I sincerely appreciate the opportunity to present my views regarding the Antidumping Act. As you know, these hearings have particular relevance to the steel industry. Not three weeks ago President Carter promised the industry this act would be vigorously enforced while in the same breath acknowledging the failure of responsible agencies to enforce it in the past. While there well may be some deficiencies on the part of responsible agencies, the Antidumping Act itself has fundamental deficiencies. The act is badly outdated. It does not recognize the economic realities of 1977. It is shot through with procedural problems as to be almost unworkable, even by the more diligent and responsible public servants.

With regard to the first point, the Antidumping Act is simply outmoded. Let me describe what I mean.

The first American Antidumping Act was passed in 1916. Modeled on our antitrust laws, it provided for treble damages to American companies injured by dumped foreign goods.

But, there is a Catch 22. To recover damages, the complaining domestic producer must show the foreigners were dumping with a malicious intent. Given the costs of discovery and the inscrutable motivations of offshore competitors, the standard has posed an insurmountable barrier. That 1916 act, which is still on the books, has been used only three times in 60 years.

By 1921, the deficiencies of the 1916 act had become obvious and a new remedy was adopted. The 1921 Antidumping Act is essentially the Antidumping Act of 1977. Although there have been several amendments, most have involved procedural as opposed to substantive alternatives.

Note what I just said: The basic concept of our antidumping laws is over half a century old and has not been changed substantially.

Think about the enormous transformation of the world's economic and political systems in that time. We have gone through the deepest depression and the worst war in modern history. International trade in real terms has increased 4000%. Over a hundred new nations have been created. And, most importantly, the basic rules of the road have changed.

In 1921, the world accepted the concept of the free market system. The so-called law of comparative advantage was universally followed. Companies and nations competed freely on the basis of their resources, technologies, and abilities. The Antidumping Act of 1921 was passed to cope with the occasional case of one company or country which tried to bend the rules. It was designed as a corrective measure to bring trade back to the universally accepted main stream of free trade.

But times have changed. In 1977, the world's economies are dominated by systems far different from the free market forces present in 1921. Major trading nations and virtually all of the developing nations have rejected the law of comparative advantage and open competition. Social and political goals have replaced economics as the motivation behind trade decisions.

Other countries insist upon full employment, even if it means selling products at a loss. Government ownership or subsidization of basic industries has become the rule rather than the exception. And, governments answer to voters rather than answering to stockholders. Profit motivation is secondary.

Thus, the basic assumptions of 60 years ago, upon which the 1921 act was passed, are no longer relevant. The act itself cannot be expected to deal with the realities of today's world trade. This is the inherent and fatal flaw in pursuing antidumping.

Despite literally hundreds of pages of regulations, the Antidumping Act is one of the most loosely constructed pieces of legislation on the books. There are a lot of procedural problems, but let me deal with three fundamental weaknesses.

First, while there is recognition of the possible existence of a nonmarket economy, it has been interpreted as limited to the Communist countries. Further, there is no recognition of the possibility that in today's world there are considerable portions of the so-called market economy countries which allocate the goods and resources by government planning agencies rather than prices freely set in the marketplace.

Second, the act must be given teeth. This is an incredible statute. There is no penalty for violating it. As it now stands, a foreign dumper is merely told to stop, that is, if he is apprehended at all. Even worse, once caught he can continue to violate the act knowing his chances of subsequent apprehension are

remote. And, even if he is caught a second time, there will be no penalties for non-compliance.

How effective do you suppose our income tax laws would be if the same remedies were applicable? In other words, dumping does pay.

We need to tell those who would engage in unfair practices that they do so at some peril. There should be stiff fines or even complete exclusion from the market in the case of repeat offenders. There should also be a means of providing relief to American companies injured by these predatory practices. Injured U.S. producers should be permitted to recover treble damages from convicted dumpers just as they are from convicted conspirators under our antitrust laws.

And, finally, continuing sales below cost must be made a per se violation. By "cost," I mean actual cost as constructed under a market economy, not some subsidized cost foreign manufacturers claim.

Passing these inherent weaknesses in our almost 50-year-old act, let's look at the procedural problems. Unlike almost any other action in the law, the Antidumping Act is not administered either under the Administrative Procedure Act or the Federal Rules of Civil Procedure.

It is more like a Spanish Inquisition. The anti-dumping procedures provide for secret evidence, secret witnesses, no cross-examination, no discovery of evidence, no depositions or interrogatories, no adversary hearings, no trial.

Once a domestic industry complains to Treasury about foreign dumping, the government has total control of the investigation. All doors are closed. The complaining industry has no rights whatsoever. The scope of the so-called investigation can be broadened or narrowed according to the whims of Treasury, often motivated by extraneous political factors. In fact, the domestic industry is frozen out of the proceeding.

Treasury can expand the investigation to include companies and products never complained about. They can average dumping margins among guilty and innocent parties, thus neutralizing guilt.

The next time your CB fails and the Smokies catch you driving 70, point out to the officer that the car you just passed was only going 40. Therefore, on the average, you weren't violating the law. That's our dumping statute.

No wonder President Carter didn't know what was going on in dumping investigations—no one knows—there is no record. Indeed it is reported that Treasury does and can trade off positive findings of dumping for other political considerations.

If the procedures allowed by the dumping act are bad, enforcement is even worse. Once a dumping finding is made, extra duties are supposedly to be assessed. In fact, such extra duties are almost never paid. All the foreign producer has to do is claim he has lowered his home market prices, thus wiping out dumping margins. He can be almost certain Treasury will never check on the accuracy of his claims. Even if he is caught, the only thing that will happen will be liability for the dumping duties he already owed. There are no penalties.

What is needed is a 1978 rework of our unfair competition laws. In short, the anti-dumping laws, as they exist today, are not enough.

On the procedural side, let me make some suggestions:

Counsel for all parties should be permitted to see the evidence gathered during the course of an investigation and participate fully in the proceedings.

After an investigation is launched, goods which are alleged to be dumped should be admitted only under bond.

The procedures should be shortened to a maximum of six months.

Averaging of products and companies should be prohibited where such averaging dilutes dumping margins on given product lines.

Outstanding dumping findings should be rigorously investigated on an ongoing basis to prevent continuation of illegal conduct.

Both Treasury and the ITC should be required to report to the Congress on a regular basis regarding their enforcement of the Act.

And finally, the refusal of offshore producers to cooperate with Treasury investigation should result in automatic findings against them.

Mr. VANIK. In your statement you have something about malicious intent. That was taken out of the law.

Mr. KNOELL. It is in the 1916 act.

Mr. VANIK. Unchanged over the 1921 provisions?

Mr. KNOELL. But there is no treble damage provision in the 1921 act, so there is—the only way that an injured party can be compensated for the injury incurred is under the 1916 act; am I right?

Mr. DE KIEFFER. Yes.

Mr. VANIK. That involves malice.

Mr. DE KIEFFER. The 1916 act is still in the books, Mr. Chairman.

Mr. VANIK. In your judgment, the malicious intent still has to be proven?

Mr. DE KIEFFER. Under the 1916 act, yes.

Mr. VANIK. Well, we will have a look at it.

Mr. KNOELL. I am sorry, Mr. Chairman, this is Mr. de Kieffer of the law firm of Collier, Shanon, Rill, Edwards & Scott.

Mr. VANIK. Nice to have you here, Mr. de Kieffer.

Mr. Frenzel?

Mr. FRENZEL. I am interested in the gentleman picking up on my earlier question on due process. You made the interesting suggesting that some kind of adversary process would be the right way to handle the problem.

I would guess that it would be very expensive, however, for the complainant to become involved in the investigatory process. Wouldn't that be a tough one for most firms to get into?

Mr. KNOELL. Well, isn't that more in theory than in fact? Because the complaining firm has to bear the burden of going forward with Treasury with considerable evidence before they can get any action.

So, indeed, they have to do the research, they have to put together the case, take it over and hand it to Treasury, and then they lose control of it.

I really question whether or not—maybe that is the way the law ought to work, the Treasury ought to bear the burden.

That is not the way the law has worked.

Mr. FRENZEL. The intention when the law was structured was that Treasury would take some of the cost burdens off the hands of complainants.

Quite obviously, whatever has been set up has not worked very effectively and what you have suggested is, I think, very interesting.

Thank you very much for your testimony.

Mr. VANIK. On page 3 you talk about the recognition of nonmarket economies. Now, we talked about the central Europeans, the Russians, being the nonmarket economies.

So, you would apply that to practically everybody left in the world, wouldn't you?

The EEC you can almost call a nonmarket economy.

Mr. KNOELL. That is right.

Well, directing your attention to the steel industry—now, I think one of the flaws in not recognizing a nonmarket economy is there is no recognition of what I might call selective socialism or where a country has picked a particular group of industries and while they may operate on a market economy overall, they don't deal in a total basis on that.

There seems to be no recognition of this in the laws in trying to develop costs that there may be elements—there may be factors that affect their costs that are nonmarket related.

The underwriting of the loss, the capital structure that they are able to put together with the support of their central banks, the moneys that they get——

Mr. VANIK. That would apply to Japan, to some extent, and less developed countries, all of them.

Mr. KNOELL. Oh, certainly.

In the steel industry, of course, this is the reason that we are in effect the bellwether. We are on the leading edge of this because of the nature of steel having been selected for special treatment in many countries.

If they get away with that, what is to stop them from moving on into other product areas?

The problem we are having today is going to be a problem faced by many other industries as years go on.

Mr. VANIK. You advocate full adversary proceedings, but how would you protect the confidentiality of business information in a full adversary proceeding?

Mr. KNOELL. Many times in many other adversary proceedings there is confidential information, it can be submitted under protective order, it can be controlled.

Mr. VANIK. We understand here there isn't much protection for confidentiality the way we work. There are not many secrets very much protected any more.

What about domestic producers? Would they be willing to reveal their domestic confidential business information?

Mr. KNOELL. In the—let me speak to one, it is not a dumping case——

Mr. VANIK. Foreign competitors or domestic competitors?

Mr. KNOELL. We in the specialty steel case, each of the producers independently submitted a great deal of confidential information to the ITC on employment, costs, prospects.

At least the material that I submitted for our company, I did with full hope and expectation that it would be treated confidentially.

As far as I am aware, it has been and will be.

Mr. VANIK. So you don't——

Mr. KNOELL. Many court proceedings have confidential material submitted under protective order.

Mr. VANIK. You see, as we look to developing a more sophisticated adversary proceeding or with something with judicial review, that is the most sensitive problem that we have, how do you provide safeguards that will, retention of the evidence will be kept confidential.

Mr. KNOELL. There is no opportunity for judicial review as we have it today.

Mr. VANIK. Not today.

Mr. KNOELL. How can you say Treasury abused their prerogatives or interpretation of the law when you don't know on what basis they made their decisions?

Mr. VANIK. Some decisions may be made without the law.

Mr. KNOELL. There are some made politically, too, yes.

Mr. VANIK. Mr. Frenzel?

Mr. FRENZEL. Again, we are talking about three phases here.

We are talking about the Treasury investigation, at which point, as I understand it, you suggest the adversary proceeding.

Then we are talking thereafter about an ITC recommendation, and, perhaps, thereafter some kind of judicial review.

In addition to the suggestion that you have made, do we need to take a couple of steps out of that process?

We have a lot of adversary processes.

Mr. KNOELL. Some of the time frameworks can be reduced.

I don't see that it would require more time than the time an injured industry needs to file their complaint with Treasury.

By that time they are in reasonable shape to go forward with the presentation of the evidence that they have.

Now, I don't think that we should foreclose the development further of evidence on the part of Treasury along the way and they have indeed access to records and information that is not readily available to us.

Mr. FRENZEL. To put the question more bluntly, do you need the ITC in the process?

Mr. KNOELL. Well, one of the suggestions I have made is that as I look at it, on continuing sales, not a spot sale but on continuing sales which are below cost, there should be a per se violation.

I think this is recognition that at the time the laws were adopted there was a general presumption and I think a valid one that nobody sells on a continuing basis below cost.

I mean, we can't do it in this country on a continuing basis, we will either be faced with predatory pricing practices by our competitors or we will go out of business because we cannot continue to operate that way.

That is no longer the case, so if we could proceed on the basis that a continuing sale below cost is a per se violation of dumping, then you don't need the ITC because you don't get involved in this injury question.

Mr. FRENZEL. The reason I ask the question is that I am not a great fan of the ITC, although I can see them being involved in some cases.

I think you are right; however, I am not sure there is really a logical explanation for them in a dumping case under section 201, where there is an effort to just figure out whether somebody is guilty under the law. You don't need somebody perusing all these other aspects, I think.

Well, I thank you for your ideas. They are very interesting.

Mr. VANIK. Thank you very much, Mr. Knoell. We certainly appreciate your testimony. Now we have the Lead-Zinc Producers Committee, Mr. Seth Bodner, president.

We are happy to have your statement. You may summarize or read from your statement.

STATEMENT OF SETH M. BODNER, PRESIDENT, LEAD-ZINC PRODUCERS COMMITTEE

Mr. BODNER. Thank you, Mr. Chairman.

I am Seth Bodner, president of the Lead-Zinc Producers Committee.

The members of the Lead-Zinc Producers Committee account for virtually all primary lead production and all primary zinc smelting and refining in the United States.

I would like to have the statement as part of the record, and I will just summarize briefly a few of the points, since the hearings today have really explored a number of the issues that we find of concern.

I would say that our interest in the subject matter is more than merely academic. We have spent a good deal of time looking at vari-

ous aspects of the import situation and would call to the committee's attention that last year zinc imports took approximately 60 percent of the domestic market. We do spend some time on these kinds of problems.

I think the major criticism that I can see and this is partly due to the basic nature of the act, is that long time periods are involved in the whole process.

In addition to the periods that have been mentioned—and I refer to them in my statement as to the withholding of appraisement, and the final decision in a case which may take well over a year—I think we tend to overlook the many weeks and occasionally months of investigation that are necessary to develop the case initially and bring it to the Treasury Department, given the kinds of requirements that have been imposed for evidence sufficient to justify their bringing an action instituting a proceeding.

The result is that you can have a great deal of damage to a domestic industry or an enormous amount of disruption of domestic markets which occurs while you prepare you case and while you go through the initial stages of having it considered well before you are even into the machinery in a way that might produce a withholding of appraisement.

Even then, as I point out here, it can be many months before or until either side of the parties to these cases knows, in fact, what is going to be the outcome.

Our judgment, up to this point, has been that one thing you cannot look for in the Antidumping Act as presently administered is prompt relief. You can look for an expensive proceeding, but not a short one.

I think another point we would like to make very strongly, and I am sure the steel industry can testify to it, and has already more eloquently than I, is the practice of requiring the kinds of information to be developed on foreign market sales and commercial transactions by a complaining industry, the kinds of information that in our country would be considered confidential business information.

If you were to wander around and talk to foreign producers of most of the materials that we are involved with, you are just not going to find out casually what their selling prices are. You are regarded as a commercial competitor in a very rich market, the United States, and they know about the dumping law, and they know about the Countervailing Duty Act, and they are not about to tell you very much about what they are really doing here.

So that when Treasury reqeusts detailed information on home market sales and sales in third countries, it sounds very good, but it is pretty tough, and I think that some effort should be made in the committee to consider the adoption of a standard which requires an investigation by the Treasury Department when evidence reasonably available to commercial competitors indicates injury. I think that that would be a substantial improvement over what has gone on in the past.

I will conclude by reference to the point of personnel.

I was not here to hear the statements, but I notice in Mr. Mundheim's text his agreement that professional staff at Treasury should be augmented. It seems to some of us that no matter what case you talk about at Treasury in the recent past you wound up talking to the same one

or two people, and it is inconceivable to me that they could possibly cope with the whole burden put on them now.

Perhaps the most effective way to improve implementation of the Antidumping Act would be to add a lot of people to the professional review part. But, obviously, that is an inhouse proposition. As an outsider, whether you are talking about a countervailing duty action you have in process or the possibilities of a dumping action, you are always talking to the essentially same couple of people, and that they must be terribly busy.

Thank you, Mr. Chairman. I would be happy to attempt to answer any of your questions.

[The prepared statement follows:]

STATEMENT OF SETH M. BODNER, PRESIDENT, LEAD-ZINC PRODUCERS COMMITTEE

Mr. Chairman and members of the committee, on behalf of the Lead-Zinc Producers Committee representing eight domestic primary producers of lead and zinc, I am pleased to have this opportunity to discuss briefly three specific aspects of the current Antidumping Act which are of concern to us.

(1) A first problem concerns the conflict between a domestic industry's need for immediate relief from unfair imports and the substantial delay inherent in the administrative process of first issuing a finding of dumping and then actually imposing dumping duties.

As the Committee is aware, unfair imports in violation of the Antidumping Act can have a very serious impact on American firms, causing lost business, lost jobs and erosion of profitability. This can occur even when dumping takes place over a relatively brief span of time. As imports of zinc reached record levels in 1976 equaling more than 60 percent of domestic consumption and continue at high levels in 1977, we have had ample basis for our consideration of and concern about the present state of the Antidumping Act.

Our basic conclusion is that under the current administration of the Antidumping Act, there is essentially no hope for prompt final action in a dumping situation. The entire process at the Treasury Department and the International Trade Commission typically takes a minimum of at least 13 or 14 months, by which time great damage may have already been done to the domestic firms and their workers. Further, the entry of a dumping finding is only the beginning of the process of actually collecting or assessing dumping duties. This further assessment phase can take years to accomplish, during which the bond for the payment of estimated dumping duties may not be an adequate protection to the domestic firms impacted by unfair less than fair value sales.

(2) A second related point is the fact that under the current administration of the Act there is a period of at least seven months between the filing of a complaint and the withholding of appraisement before the imports involved are subject to payment of dumping duties, even if it is ultimately found that sales have been in violation of the Antidumping Act. This fact makes the Act an even less effective tool against unfair imports, since a foreign producer can sell at less than fair value before the filing of a complaint without the risk of the payment of any dumping duties on such sales.

(3) A third area of concern relates to the extensive information typically required by the Treasury as a basis for its opening of an investigation under the Act. The lengths to which domestic industries have gone in order to prompt a Treasury Antidumping investigation have been detailed in recent press articles. Common practice in dumping cases has virtually required domestic interests to engage overseas detectives to ferret out the terms of private contracts between foreign parties and domestic customers, contracts which, in fairness, frequently would be considered here as confidential business information. The Treasury Department also has very detailed requirements on "injury" information that must be supplied with an Antidumping Act petition, which often requires special and time consuming industry surveys. Consideration should be given to establishing statutory guidelines which would require the Treasury to initiate its own investigation when evidence reasonably available to competing commercial interests indicates the presence of injurious dumping.

In sum, it appears that the current administration of the Antidumping Act may be unnecessarily cumbersome and time consuming to respond to immediate

injury from unfair trade practices. In fairness we must add our impression that the Treasury Department is woefully short of the professional manpower needed to process dumping applications. Indeed, the quickest contribution to the effective enforcement of dumping laws might be a major expansion of Treasury's professional staff in this field.

Thank you for this opportunity to state some of our concerns on this important matter.

MEMBER COMPANIES OF THE LEAD-ZINC PRODUCERS COMMITTEE

AMAX Lead and Zinc, Inc.,
Pierre Laclede Center,
7733 Forsyth Boulevard,
Clayton, Mo.

ASARCO Inc.,
120 Broadway,
New York, N.Y.

The Anaconda Co.,
1849 West North Temple,
Salt Lake City, Utah

The Bunker Hill Co.,
Subsidiary of:
Gulf Resources & Chemical Corp.,
477 Madison Avenue,
New York, N.Y.

National Zinc Co.,
Subsidiary of:
Engelhard Minerals & Chemicals Corp.,
299 Park Avenue,
New York, N.Y.

New Jersey Zinc Co.,
Subsidiary of:
Gulf & Western Natural Resources Group,
65 East Elizabeth Avenue,
Bethlehem, Pa.

St. Joe Minerals Corp.,
250 Park Avenue,
New York, N.Y.

Homestake Mining Co.,
650 California Street,
Suite 1550,
San Francisco, Calif.

Mr. VANIK. On April 17, 1974, a dumping finding was published covering primary lead from Australia and Canada.

This finding was revoked on May 7, 1976. This is a very short time compared with the normal time that a dumping finding is outstanding.

Do you want to comment on that?

Mr. BODNER. I would be delighted to.

I should first point out that the dumping action involved was brought by the Bunker Hill Co., not the Lead-Zinc Producer Committee. The committee, however, did take a position of some opposition to the holding of that revocation hearing initially because we felt that it would set a precedent of, in effect, a premature revocation.

The findings had not been on the books for even a year when the initial petition was filed. There was a series of notices; the International Trade Commission canceled one hearing; we objected that no standards had been established pursuant to which revocation could be considered so there was no basis for knowing when and why or what would constitute an adequate change in circumstances to justify having such a hearing.

But ultimately there was a hearing and we participated arguing both on certain technical issues in the dumping situation there involved and our view of the market outlook.

The Commission in its proceedings and in its opinion did not in fact decide the case on any of the procedural arguments but went off on the injury ground.

I have to say that we did not choose at that time to specifically challenge their basic right to have a revocation hearing.

I accept the point that you made this morning, that is a point well made by the very question you ask, which is to identify the statutory

basis for a revocation hearing on changed circumstances affecting the injury question.

I don't believe there is a statutory basis for a revocation hearing. But one can make an argument, and I am sure they will, that there is an inherent right to review.

Now, the Commission has since come out with regulations attempting to set forth some standards on when revocation proceedings can be undertaken. We have been arguing for the adoption of such standards for a very long period of time, and they did adopt a fair number of our comments, but I have not yet had a chance to review them in detail, as they were published only recently.

Revocation was a very difficult issue, because I think people do not recognize the expense involved in bringing these cases and in conducting a revocation hearing. Here was a case that was less than a year old and the company that brought it had to be back in there helping to defend it and, so to speak, before the ink was hardly dry.

Mr. VANIK. Thank you, Mr. Bodner.

Are there any questions, Mr. Frenzel?

Mr. FRENZEL. Can you tell me something about the businesses that you represent? What is the dumping problem with respect to your group?

Mr. BODNER. Well, the businesses range from mining to smelting and refining of primary lead metal and slab zinc. There have been dumping proceedings in the lead case as Mr. Vanik just referred, where there was a finding of dumping by the Treasury Department against Canadian——

Mr. FRENZEL. Is this in primary zinc metal?

Mr. BODNER. That was primary lead metal. Excuse me.

In the zinc situation we are in the midst of a bad period in the industry not only in the United States but worldwide and there has been concern about whether there has been dumping. It sounds as though it ought to be a relatively easy thing to determine, but that is why we were so interested in these hearings, because it really is not.

You don't just go to a European zinc producer and say, "By the way, would you tell me what your real selling price is to your customers," because he will not do so. He has a good idea why you are asking, of course.

And it is not easy to go around and lift contracts between private parties so that you know what he is selling for. The customers do not volunteer that information because they do not want to antagonize anybody.

Mr. FRENZEL. In those two businesses, what are the percentages of foreign imports?

Mr. BODNER. Well, in lead the percentage of foreign imports is around 20 percent of the market and has been going down in recent years with the development of very major primary lead mines in Missouri, southeast Missouri.

In zinc the trend is exactly the opposite way. In 1974 and 1975 we were importing about 40 percent already of our consumption, that was up from about 23 percent 4 or 5 years before that, and in 1976 we imported more than 60 percent of domestic slab zinc consumption and this year, even though imports are down somewhat from last year, they are clearly running at about 50 percent of domestic consumption.

We have got a collapsing price situation and all the other indexes that go to make up a case under one or another of these statutes.

Mr. FRENZEL. I just wanted to get an idea of what the industry conditions were. As far as dumping goes, it doesn't make any difference whether imports are rising or falling.

Mr. BODNER. Right.

Mr. FRENZEL. I just wanted to get an idea of what the industry conditions were. As far as dumping goes, it doesn't make any difference whether imports are rising or falling.

Mr. BODNER. Right.

Mr. FRENZEL. If somebody is dumping on you, they ought to be called to account under the law.

Thank you very much.

Mr. BODNER. Thank you.

Mr. VANIK. Thank you very much. We very much appreciate your testimony, Mr. Bodner.

The next witness is Mr. Norman Velisek, vice president of marketing, SK Tools.

We will be happy to hear from you, Mr. Velisek.

STATEMENT ON BEHALF OF THE HAND TOOLS INSTITUTE PRESENTED BY NORMAN A. VELISEK, VICE PRESIDENT, MARKETING, SK TOOLS TOOL GROUP, DRESSER INDUSTRIES, CHICAGO, ILL., ACCOMPANIED BY RICHARD BYRNE, ASSISTANT SECRETARY OF THE HAND TOOLS INSTITUTE

Mr. VELISEK. I am Norman Velisek, Vice President, Marketing, SK Tools, Chicago, Ill., and president of the Hand Tools Institute, the trade association representing domestic producers.

A list of the members of the institute has been submitted to the Chief Counsel of the committee.

My friend is Richard Byrne, assistant secretary of HTI.

The Hand Tools Institute recommends that the procedures under the Antidumping Act be reformed to provide a means of judicial appeal of U.S. International Trade Commission injury determinations.

Second, the institute recommends that the act be reformed to include more specific criteria necessary for the U.S. International Trade Commission to consider when determining injury or likelihood thereof.

The reasons we believe the Antidumping Act procedures must be reformed are contained in testimony presented to this subcommittee February 19, 1976, concerning theoversight of the U.S. International Trade Commission. In that statement the Hand Tools Institute expressed its dissatisfaction in the manner in which the U.S. ITC performed its responsibilities in two separate antidumping investigations concerning nonpowered hand tools.

The institute believes that the conclusion reached by the Commission in each case and the basis for its decision was so contrary to the intent of the Congress with respect to the administration of the Antidumping Act of 1921 as amended that firm legislative oversight and specific guidance by this committee are required.

I will not repeat the details of the February 19, 1976, voluminous testimony before this committee as it is a matter of record. However,

let me simply say that we have here an American industry, the domestic producers of hand tools and their workers, who have sought responsibly to invoke provisions of the Antidumping Act of 1921, as amended, not once, but twice. In each case the circumstances clearly justified affirmative action.

The Treasury Department found that hand tools from Japan were being sold in the United States at major margins of dumping. The evidence submitted to the Commission and the Commission's own decision acknowledge that such imports were being sold in the United States at lower prices than domestic merchandise in the same class or kind.

The evidence submitted to the Commission demonstrated that the margin of price advantage which the importers and Japanese suppliers conferred upon themselves by dumping was used to increase the penetration of Japanese tools in the U.S. market and as a result the domestic industry suffered in the form of loss of market share, loss of sales, decrease in the rate of growth in shipments in the domestic market and a decline in their earnings and employment.

The congressional intent that relief be provided under the Antidumping Act when the amount of injury is more than trifling clearly justified an affirmative determination in these cases. Yet the Commission denied relief to the industry on the basis of a written decision which contains significant errors on major points as outlined in our previous testimony.

As there exists no clear avenue of judicial appeal, the Hand Tools Institute was forced to request direct congressional action to rectify the erroneous dumping decision. Over 35 Members of the House of Representatives cosponsored H.R. 139, a bill designed to increase for a 5-year period the duty on certain forged hand tools, thereby providing the relief from dumping which would have been provided had the U.S. International Trade Commission found injury to the domestic industry.

Had there been specific criteria for determining injury to the domestic industry, H.R. 139 would not have been necessary. Had the Commission been following reasonable criteria for determining injury, we are confident that the Commission would have found in favor of the domestic industry. If it is alleged that the Commission made errors in its decision and ignored evidence, the injured party should be permitted to appeal the case before an impartial forum. The Commission must be made accountable in the courts for the decisions which it renders.

The Hand Tools Institute stands ready to work with the Subcommittee on Trade in the development of criteria for the use of the International Trade Commission in determining injury or likelihood or injury. The Hand Tools Institute has, and will continue to. work with the subcommittee and its staff in the preparation of a judicial review bill which not only will provide for judicial review but also spell out the criteria for a finding of injury by the ITC. We believe these reforms are essential to the viability of the Antidumping Act of 1921 as a means of stopping the injury or likelihood of injury to a domestic industry as a direct result of dumping.

Thank you for your attention to this testimony. We will be happy to answer any of your questions.

Mr. VANIK. I very much appreciate your testimony, Mr. Velisek.

I have had an opportunity to visit Japan in September, and I looked around for hand tools, and I found only one American hand tool that was able to penetrate that market. It was a very unique and extraordinary tool; I think it was made in Nebraska somewhere; I don't even know the name of the manufacturer.

I have been very much concerned about this hand tool problem Mr. Annunzio and many other members of the subcommittee felt very strongly about the problems that you have. Now there is a judicial review proposal that is floating around Treasury somewhere or somewhere in the administration.

They have got a lot of things that are floating around. The adjustment assistance program has yet to come down. We give them a bimonthly request for it, and we have nothing on that. I understand that it is somewhere between Treasury and the White House and I don't know where it could be.

Maybe it's lost in the Pentagon [Laughter.]

But, in any event, we don't have it.

Now, it is my proposal that we can't do much for the remainder of this year, but we are already endeavoring to mark up an adjustment assistance bill without a recommendation from the administration, and I will recommend to our subcommittee that we move in the same way on judicial review right after we get back here in January.

I don't think we can do it in this intervening period. We have legislative problems that are especially unique to the energy conference and other matters.

But I think we ought to move on the judicial review.

I don't know that your limitations are within the framework of authority in what they do, and you don't really have any substantive basis on which to review a decision that denies you relief other than the arbitrary nature of the decision.

In other words, you have an economic mandate toward which you can't respond with valid, legitimated argument or evidence.

So I hope one of the things we can put on the agenda is the development of a judicial review proposal which we can initiate, move forward with, and try to meet, or perhaps that will precipitate the administration's coming in with something that will be suitable to them. But in any event we ought to start the legislative process.

I will endeavor to do that right after we resume our business in January.

Mr. VELISEK. We appreciate that, Mr. Chairman.

Mr. VANIK. Mr. Frenzel.

Mr. FRENZEL. Thank you very much.

We appreciate your testimony.

The concept of a more complete judicial review is an attractive one to us. There are some problems with it. The first is that it will probably extend the process by many, many months. On the other hand, there are some advantages, the most prominent of which, it seems to me, is that it will give the ITC a sense that somebody is scrutinizing their decisions. Right now they seem to me to be responsible to no one, but I think that would have a salutary effect.

Would comment on that?

Mr. VELISEK. We believe, if I understand your statement, we believe this is absolutely necessary. The Commission seems to be able to

use nearly any criteria or any vague means it desires to determine whether there is injury or not. And we would like to know definitely what constitutes it.

Mr. VANIK. You want a criterion.

Mr. VELISEK. Yes, sir.

Mr. FRENZEL. Didn't you have the case in which the ITC determined that although the materials were sold under cost there was not sufficient injury to your industry.

Mr. VELISEK. Substantial margins of dumping were proved, and they said in effect they were not the same kind of tools sold in the same markets in one of their major statements on that case.

Mr. FRENZEL. Thank you very much, Mr. Chairman.

Mr. VANIK. Thank you, Mr. Velisek; thank you for your testimony.

The next witness will be Alexander J. Vogl of the Wilton Corp.

STATEMENT OF ALEXANDER J. VOGL, CHAIRMAN OF THE BOARD AND PRESIDENT OF THE WILTON CORP., DES PLAINES, ILL.

Mr. VOGL. Thank you, Mr. Chairman. I am Alexander Vogl, chairman and president of the Wilton Corp., Des Plaines, Ill.

We are a diversified manufacturer with plants in Illinois, Tennessee, Alabama, and Mississippi employing 600 people. My company is also a member of the Hand Tools Institute. So I appreciate this double opportunity for our group to address you.

I would like to share an experience with you that I had recently and express some views on this subject.

Last month I was on a business trip in Caracas, Venezuela, and on the last day of my stay there, which was a Saturday, I was invited by the general manager of a Caracas manufacturing business to come out for a tour of his facility.

He happens to be an American and personal friend of one of my executives so my tour of his facility was strictly personal in nature.

The plant I was visiting manufactures valves and thermostats for gas appliances. My company is neither a supplier nor competitor in that field. So I think that that is why this gentleman was rather open with me, because we are not even in the same industry.

During the course of the plant tour I asked him whether very much of the plant's production was for export outside of Venezuela. My host looked at me with an expression which told me that I had asked him a rather foolish question. So when I asked him why he was looking at me that way, he told me that he couldn't afford not to export.

Apparently that is where a large part of his profit comes from because he receives a rebate from the Venezuelan Government every time he makes a shipment out of that country.

Specifically, the rebate is 18 percent for valves, 23 percent for thermostats.

These rebates—I asked him if these are in the form of tax credits or how does this work; and he told me the rebates are made in cash in the form of a government check which is mailed to the company approximately 30 days after each export shipment clears the border.

We have, in my company, suspected for many years that rebates are used by foreign governments to subsidize the manufacturers against whom we compete in some of our products which include bench vises and other tools.

My experience in Venezuela was the first time that the specific existence of of these rebates was revealed to me at firsthand and including specific numbers.

One of the other American manufacturers of vises recently received a letter from a company in Japan of which I have a copy here if you would care to have it for your records, which also acknowledges the existence of financial participation in export sales on the part of the Japanese Government.

This letter contains, among others, the following statement, and this is a direct quotation from the letter:

"Said organization is currently receiving our Government's subsidy of 500 million yen." That would be about $2 million. And its position is extremely influential. "Because of the support we are receiving we assure you of supplying the highest quality products made in this country at the most competitive prices and with promptest delivery."

By the way, I should explain this letter from Japan is seeking to sell Japanese vises to the American vise manufacturer. We have had some similar offers telling us, "Stop trying to produce your products; we can deliver them to you cheaper than you can make them."

Mr. VANIK. Make you a distributor, rather than a manufacturer, urging you to shift your role?

Mr. VOGL. Exactly, sir.

Mr. VANIK. Well, this is very interesting.

Mr. VOGL. In my opinion, the United States is one of the very few industrial countries in the entire world in which Government rebates or subsidies do not exist.

That means that individual corporations in this country such as mine are forced to compete not against similiar individual corporations in foreign countries but against those corporations in partnership with their respective Governments.

I feel there are two reasons why our antidumping legislation has been largely ineffective over the years. One reason is that the existence of rebates and subsidies by foreign governments is not recognized—in fact, it is not even acknowledged—by the Treasury Department in establishing dumping margins.

The second reason is that the process involved in establishing dumping and subsequently in establishing injury to the domestic industry is so time consuming and so difficult to prove that a domestic manufacturer or industry has to be on the verge of collapse before the process of governmental relief begins.

I suggest that it is essential that both of these shortcomings be corrected by new legislation if we are to avoid the continuing erosion and eventual disappearance of many American industries.

Tht was the end of my prepared statement. If I might add one thought to that, Mr. Chairman, I really question why it is necessary to have the double burden of proof on American industry. It seems that it should be enough to establish the fact that dumping exists withou having to show that you are on the way to the morgue, or at least on the way to the hospital.

[The prepared statement follows:]

STATEMENT OF A. J. VOGL, CHAIRMAN OF THE BOARD AND PRESIDENT, WILTON CORP.

Mr. Chairman and members of the committee, thank you very much for this opportunity to express my views and relate some experience to you.

My name is Alexander J. Vogl. I am Chairman of the Board and President of Wilton Corporation, Des Plaines, Illinois. We are a diversified manufacturing business with plants located in Schiller Park, Illinois, Winchester, Tennessee, Birmingham, Alabama, and Pontotoc, Mississippi. We employ approximately 600 people at those plants, and the Des Plaines head office.

Last month I was on a business trip in Caracas, Venezuela. On the last day of my stay there, which was a Saturday, I was invited by the general manager of a local manufacturing business for a tour of his facility. This gentleman, who is an American, happens to be a personal friend of one of my executives, and my tour of his facility was strictly of a personal nature.

The plant I visited manufactures valves and thermostats for gas appliances. (Wilton Corporation, by the way, is neither a supplier nor a competitor in that field.) During the course of the plant tour I asked whether very much of the plant's production was for export outside of Venezuela.

My host indicated by his expression that I had asked a rather foolish question. He then told me that he could not afford to do otherwise, because he receives a rebate from the Venezuelan government every time he makes a shipment out of the country. The rebate is 18 percent for valves, and 23 percent for thermostats, and the rebates are made in cash in the form of a government check mailed to the company approximately 30 days after each export shipment clears the border.

We have suspected for many years that rebates or subsidies are used by foreign governments to subsidize manufacturers against whom we compete in some of our products, including bench vises and other tools. My experience in Venezuela was the first time that the specific existence of such rebates was revealed to me at firsthand, and including specific numbers.

One of the American manufacturers of vises recently received a letter from a company in Japan, of which I have a copy here, which also acknowledges the existence of financial participation in export sales on the part of the Japanese government. This letter contains the following statement:

"The said organization is currently receiving our Government's subsidy of 500 Million Yen and its position is extremely influential. Because of the support we are receiving, we assure you of supplying the highest quality products made in this country at the most competitive prices with the promptest delivery."

In my opinion, gentlemen of the committee, the United States is one of the very few industrialized countries in the entire world in which government rebates or subsidies do not exist. That means that individual corporations in this country are forced to compete not against similar individual corporations in foreign countries, but against those corporations in partnership with their respective governments.

There are two reasons why our anti-dumping legislation has been largely ineffective during recent years, in my opinion. One reason is that the existence of rebates and subsidies by foreign governments is not recognized (in fact, it is not even acknowledged) by the Treasury Department in establishing dumping margins. The second reason is that the process involved in establishing dumping, and subsequently in establishing injury to the domestic industry is so time consuming, and so difficult to prove, that a domestic manufacturer or industry have to be on the verge of collapse before the process of governmental relief even begins.

I suggest that it is essential that both of these factors be corrected by new legislation if we are to avoid the continuing erosion—and eventual disappearance—of a great number of American industries.

Thank you.

Mr. VANIKI Mr. Frenzel?

Mr. FRENZEL. Thank you, no questions, Mr. Chairman.

Mr. VANIK. Thank you, very much.

I will certainly pursue inquiry to the two cases that you have addressed. I think this is a practice that is very widespread and I feel we have to stay on top of this problem and try to monitor any attacks made on normal trade.

This is certainly unfair as a practice that ought to be somehow stopped or restrained by a proper action on the part of our Government.

Mr. VOGL. Yes, sir, unfortunately, it seems to be becoming the rule rather than the exception.

Mr. VANIK. Yes; I understand. Well, thank you, very much. We appreciate your testimony, Mr. Vogl.

Mr. VOGL. Thank you.

Mr. VANIK. Mr. Vogl, excuse me, have you ever brought countervailing duties in the case of these subsidies?

Mr. VOGL. No; we have only brought the two antidumping cases which Mr. Velisek mentioned in his testimony.

Mr. VANIK. Well, thank you, very much.

[The following was subsequently received for the record:]

WILTON, CORP.,
Des Plaines, Ill., November 22, 1977.

HON. CHARLES A. VANIK,
Chairman of Subcommittee on International Trade, House of Representatives, Washington, D.C.

DEAR MR. VANIK: Two weeks ago you gave me the opportunity to testify at the hearing of your subcommittee, which I genuinely appreciated. We are today, in fact, in the process of mailing back to Mr. Martin of your staff the corrected transcript of my testimony.

I would like to bring to your attention a simple chart which I really should have made an exhibit to my testimony on November 8. This is a chart showing imports of vises into the United States from January 1972 through September 1977.

It illustrates the partial destruction of a basic American industry in the short span of three years.

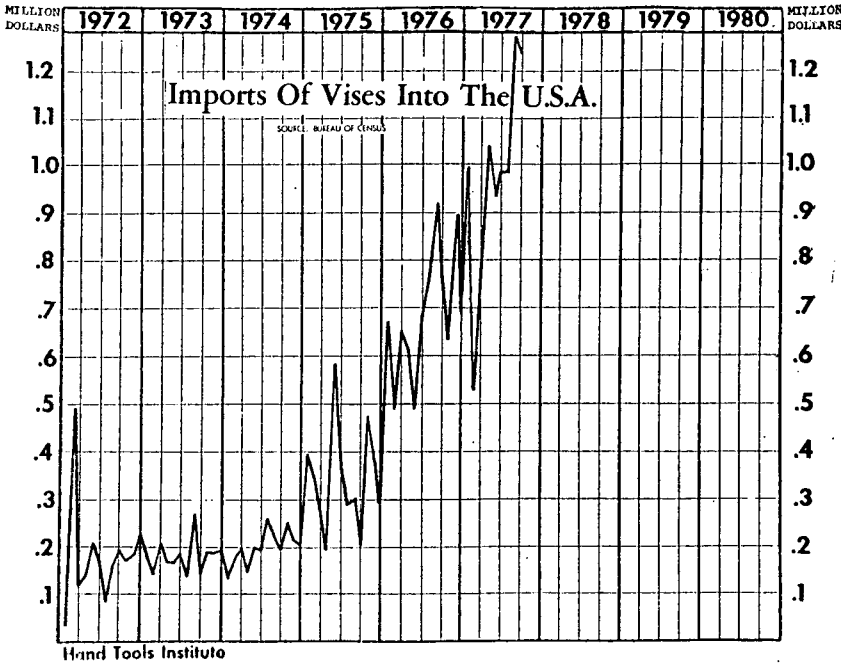
As you can see from the chart, average monthly shipments of vises into the United States have literally exploded during calendar years 1975–6–7, reaching a level more than 500 percent greater than existed three years ago. (This explosive rise, by the way, coincides precisely with the findings of "no injury" by the International Trade Commission in October 1975).

We are enclosing with the five year chart the detailed, month-by-month report covering the latest twelve months. As you can see, the data is supplied by the U.S. Department of Commerce. Similar detailed sheets, by month, are available for the five years which are represented by the chart; please feel free to request them.

It seems obvious that the vise manufacturing industry is not unique in the problems it faces. Importation of all kinds of manufactured products has been on a similiarly explosive curve during the last year or two. It appears to me that for a broad spectrum of American industries, time is running out!

Yours truly,

ALEXANDER J. VOGL,
President.



IMPORTS OF VISES INTO THE UNITED STATES (U.S. DEPARTMENT OF COMMERCE)

6493710 vises, except parts or accessories for machine tools; new series, Jan. 1, 1972; 1972 tariff rate—5 percent ad valorum, 45 percent Communist countries

Date and country	Number of pieces	Valuation	Average value per piece
August 1977:			
Brazil	16,224	$29,203	$1.800
United Kingdom	773	15,863	20.521
Netherlands	12	325	27.083
France	7,392	6,392	.865
Federal Republic of Germany	2,025	9,593	4.737
Switzerland	3,008	55,607	18.486
India	6,471	54,172	8.372
Korean Republic	9,612	11,370	1.183
Hong Kong	2,500	4,000	1.600
China-Taiwan	48,060	252,686	5.258
Japan	132,682	838,684	6.321
Total	228,759	1,277,895	5.586
September 1977:			
Canada	70	3,699	52.843
Brazil	19,776	35,597	1.800
United Kingdom	279	3,838	13.756
Federal Republic of Germany	992	16,417	16.549
Switzerland	628	17,700	28.185
Israel	235	8,168	34.757
India	3,017	29,840	9.891
Korean Republic	33,616	21,030	.626
China-Taiwan	45,820	361,588	7.891
Japan	108,067	741,381	6.860
Total	212,500	1,239,258	5.832

IMPORTS OF VISES INTO THE UNITED STATES (U.S. DEPARTMENT OF COMMERCE)—Continued

6493710 vises, except parts or accessories for machine tools; new series, Jan. 1, 1972; 1972 tariff rate—5 percent ad valorum, 45 percent Communist countries

Date and country	Number of pieces	Valuation	Average value per piece
March 1977:			
Canada	50	2,779	55.580
Mexico	10	702	70.200
Argentina	2,016	720	.357
United Kingdom	545	9,093	16.684
France	1,322	780	.59
Federal Republic of Germany	2,072	6,635	3.202
Switzerland	225	8,142	36.187
Israel	30	716	23.867
India	10,670	87,181	8.171
Korean Republic	4,032	1,539	.382
China-Taiwan	30,506	185,213	6.071
Japan	128,216	480,076	3.744
Total	179,694	783,576	4.361
April 1977:			
Canada	74	3,095	41.824
Guatemala	485	2,362	4.870
Brazil	1	303	303.000
United Kingdom	1,266	28,645	22.626
France	50	387	7.740
Federal Republic of Germany	820	13,699	16.706
Switzerland	3,030	41,975	13.853
Spain	504	355	.704
India	5,500	49,357	8.974
Korean Republic	21,656	10,816	.499
China-Taiwan	24,513	234,618	9.571
Japan	99,668	653,072	6.552
Total	157,567	1,038,684	6.592
May 1977:			
Canada	1,140	4,482	3.932
Argentina	1,356	731	.539
Sweden	1	319	319.000
United Kingdom	766	6,739	8.798
Federal Republic of Germany	3,560	16,892	4.745
Czechoslovakia	600	8,068	13.447
Switzerland	2	9,623	4,811.500
India	8,438	84,879	10.059
Korea Republic	13,538	9,914	.732
China-Taiwan	34,500	263,545	7.639
Japan	75,329	529,578	7.030
Total	139,230	934,770	6.714
June 1977:			
United Kingdom	109	1,415	12.982
Netherlands	800	1,507	1.884
France	4,378	44,311	10.121
Federal Republic of Germany	2,345	15,146	6.459
Switzerland	1,604	30,671	19.122
Poland	94	4,924	52.383
Italy	50	2,045	40.900
Oman	1,476	5,883	3.986
India	6,823	72,011	10.554
Korean Republic	19,464	9,732	.500
China-Taiwan	55,190	275,026	4.983
Japan	96,157	518,450	5.392
Total	188,490	981,121	5.205
July 1977:			
United Kingdom	110	3,568	32.436
Belgium	2	471	235.500
France	7,783	62,151	7.985
Federal Republic of Germany	1,408	10,931	7.763
Switzerland	1,203	19,277	16.024
India	1,500	5,026	3.351
China-Mainland	1,920	18,445	9.607
Korean Republic	22,564	22,107	.980
China-Taiwan	59,587	317,173	.532
Japan	72,703	523,577	7.202
Total	168,780	982,726	5.823

IMPORTS OF VISES INTO THE UNITED STATES (U.S. DEPARTMENT OF COMMERCE)—Continued

6493710 vises, except parts or accessories for machine tools; new series Jan. 1, 1972; 1972 tariff rate—5 percent ad valorum, 45 percent Communist countries

Date and country	Number of pieces	Valuation	Average value per piece
October 1976:			
Canada	1,313	4,477	3.410
Brazil	13,680	25,719	1.880
United Kingdom	264	3,969	15.034
France	320	1,045	3.266
Federal Republic of Germany	1,171	11,130	9.505
Switzerland	854	10,123	11.854
Poland	1,350	25,044	18.551
Spain	548	6,720	12.263
Israel	42	2,377	56.595
India	4,336	19,931	4.597
Korean Republic	16,230	15,137	.933
Hong Kong	1,900	2,755	1.450
China-Taiwan	16,943	171,004	10.093
Japan	48,616	336,436	6.920
Total	107,567	635,867	5.911
November 1976:			
Guatemala	604	2,942	4.871
Brazil	10,332	19,424	1.880
United Kingdom	184	4,340	23.587
France	1,395	2,094	1.501
Federal Republic of Germany	3,290	55,202	16.779
Switzerland	504	9,416	18.683
Poland	2,175	36,369	16.721
Spain	2,198	6,421	2.921
India	8,466	45,530	5.378
China Mainland	2,500	18,110	7.244
Korean Republic	46,561	35,721	.767
China-Taiwan	31,980	220,674	6.900
Japan	65,086	437,802	6.727
Total	175,275	894,045	5.101
December 1976:			
Canada	1,039	3,543	3.410
United Kingdom	790	6,677	8.452
France	1,896	456	.241
Federal Republic of Germany	2,830	16,291	5.757
Switzerland	1,418	10,337	7.290
Spain	100	1,012	10.120
Italy	1,000	344	.344
Israel	74	1,848	24.973
India	3,299	35,643	10.804
Korean Republic	852	6,566	7.707
China-Taiwan	66,975	303,967	4.539
Japan	42,271	305,244	7.221
Total	122,544	691,928	5.646
January 1977:			
Canada	32	2,332	72.906
Argentina	397	933	2,350
United Kingdom	2,636	5,721	2.170
France	1,110	767	.691
Federal Republic of Germany	189	2,060	10.899
Switzerland	2,504	46,983	18.763
Poland	13,363	176,889	13.237
Spain	5,632	10,049	1.784
India	5,079	67,217	13.234
Korean Republic	13,000	12,570	.967
China-Taiwan	43,799	247,117	5.642
Japan	70,346	423,419	6.019
Total	158,087	996,058	6.301
February 1977:			
Canada	30	1,236	41.200
Guatemala	1,209	5,888	4.870
United Kingdom	502	4,647	9.257
France	2,416	1,044	.432
Federal Republic of Germany	9	4,055	450.556
Switzerland	504	9,416	18.683
Spain	1,850	987	.534
India	7,039	63,272	8.989
Korean Republic	8,902	19,213	2.158
China-Taiwan	34,715	179,690	5.176
Japan	39,622	239,902	6.055
Total	96,798	529,350	5.469

Mr. VANIK. Our next witness is Mr. Donald A. Webster, of AMF, Inc.

STATEMENT OF DONALD A. WEBSTER, VICE PRESIDENT, GOVERNMENT RELATIONS, AMF, INC., ACCOMPANIED BY CHARLES VERRILL, COUNSEL

Mr. VANIK. We will be very happy to hear from you, Mr. Webster.

Mr. WEBSTER. Thank you. Mr. Chairman, Mr. Frenzel, my name is Donald A. Webster. I am vice president for Government Relations of AMF, Inc. I am accompanied by Mr. Charles Verrill, Patton, Boggs & Blow, who represented some of the domestic industry in this case.

I have been asked to testify here today to express the position of AMF and its subsidiary, the Harley-Davidson Motor Co., on Treasury's handling of the liquidation of duties on imports of electric golf carts from Poland.

As a domestic manufacturer of golf cars, Harley-Davidson has a significant interest in this action. Harley-Davidson has also filed a complaint alleging dumping of motorcycles from Japan, which is being processed by Treasury.

Our position on the golf cart matter is that the Treasury has unnecessarily delayed resolution of issues relating to the computation of actual dumping duties by not following the clear intent of Congress as expressed in the Trade Reform Act of 1974.

The petition asking Treasury to investigate import sales of Polish golf carts was filed by Outboard Marine Corp. in April 1974. Treasury subsequently found that such imports during the period of investigation were at less than fair value, and effective March 16, 1975, ordered withholding of appraisement.

The International Trade Commission then found that such sales had injured the U.S. manufacturers, including Harley-Davidson, by a 5-to-1 decision issued September 16, 1975. Some months earlier, Outboard Marine had gone out of the golf cart business.

Since the final determination of dumping made over 2 years ago, however, Treasury has been unable to determine the fair value for Polish golf carts (with the exception of the period March to August 1975), and thus the amounts of special antidumping duties despite specific language in the Trade Reform Act dealing with establishment of fair value in just the situation that has arisen in this case.

Polish golf carts are produced in a controlled economy for sale in the United States. There are no home market or third market sales to our knowledge. In these circumstances, 205(c) of the Antidumping Act, requires Treasury to determine fair value by reference to the price of golf carts in a non-state-controlled economy country, or if none, then the United States.

In the 1974 investigation, Treasury used Canadian prices to ascertain fair value. However, the Canadian firm stopped production in 1974 and most recently sold only thirty 3-year-old carts at distress prices in 1976. Yet Treasury is still trying to develop a fair value position that is based on these sales, apparently because it is thought a low duty will result. We think this is wrong since 1974 Canadian prices that were below cost are just not an adequate referent.

Golf carts are currently produced in quantity in Japan and, of course, the United States. If Treasury is reluctant to use Japanese

prices (which are very high), then U.S. prices should be used. Treasury should not, however, change the law by administrative action in adopting fair value concepts that differ from the precise guidelines of section 205(c) of the act.

This position is spelled out in more detail in the attached supplement and correspondence to Treasury of April 22, 1977, and October 24, 1977, from Charles Owen Verrill, Jr. I would ask that the supplement and correspondence be entered into the record at this hearing.

In conclusion, antidumping laws are effective only if enforced on a timely basis. Delay in liquidating dumping duties, after injury and less than fair value selling are found, robs the act of much of its deterrent value.

Thank you.

[Attachments to the prepared statement follow:]

SUPPLEMENT TO STATEMENT OF DONALD A. WEBSTER

Re: Golf cars from Poland.

Since the final determination of dumping in the Polish golf car case in September 1975, Treasury has liquidated duties on only those golf cars imported from March 14, 1975 through August, 1975. The rate of duty was computed by comparing "foreign market value" to the import price. Hence, the critical determination is what "foreign market value" to utilize.

In controlled economy country cases, foreign market value is determined by reference to the price of the same goods in a free market economy. See § 205(c) of the Antidumping Act. In the Polish golf car case, foreign market value was based on the price charged by a small Canadian manufacturer who has not built a golf car since 1974 and lost money on those it did build. Treasury, however, still insisted on an economy of scale adjustment even though market prices obviously reflect adjustments required by competition.

The 1975 liquidations were based on the 1974 Canadian prices and still yielded a duty, after adjustments we regard as inappropriate, of over $140 per car.

For liquidations after August 1975, Treasury has not made final policy decisions about the foreign market value. The most recent round of discussions between Treasury and the Polish manufacturer is described in the attached letter dated October 24, 1977, from Charles Owen Verrill, Jr., to Peter Ehrenhaft, Deputy Assistant Secretary for Tariff Affairs. (Annex A). This letter, together with that sent to Treasury on April 22, 1977, (Annex B) detail the AMF position on the appropriate measure for duty liquidation.

PATTON, BOGGS & BLOW,
Washington, D.C., October 24, 1977.

Re: Electric golf cars from Poland.

Mr. PETER EHRENHAFT,
Deputy Assistant Secretary (Tariff Affairs),
Department of the Treasury
Washington, D.C.

DEAR Mr. EHRENHAFT: On October 14, 1977, representatives of the government of Poland and Pezetel orally presented to Treasury previously submitted views on the liquidation of duties in the golf cars from Poland proceeding. Pursuant to a new Treasury practice, which I strongly endorse, I was invited to attend the meeting and participate in the discussion. However, since I had received the memorandum of Professor Soltysinski of August 25, 1977, only a few days previously and had received the memorandum by Mr. Schwarz' office, dated October 13, 1977, just the previous afternoon, I did not have a chance to prepare a detailed response prior to the meeting. Both memoranda do, however, require rebuttal, which is the purpose of this letter.

A. INTRODUCTION

In considering the various arguments made by Pezetel, it must be kept in mind that this case involves a very specific factual situation and not any cosmic principles of international or east/west trade. Instead, it involves the Polish manu-

facturer of Melex golf cars, which, originally at least, were duplicates of a golf car produced by E-Z-Go, a manufacturer in the United States. Melex golf cars have always been manufactured almost exclusively for sale in the United States in a market that Pezetel had no role in developing. There is no market for the Melex golf cars in Poland or anywhere else in any quantity and, with the exception of Japan,[1] where a golf car industry has developed recently, golf cars are a product unique to the United States. Pezetel is not, therefore, in the position of the ordinary exporter who seeks access to the United States market.

These considerations narrow the policy focus even if Treasury finally concludes the United States prices are the proper referent for determining the foreign market value of Melex golf cars. Such a decision, which would require a finding that sales of the same or similar articles produced in third countries other than the United States are not an adequate basis for comparison purposes, would have precedental value only in similar cases and not the whole range of proceedings involving east/west trade.

B. CONTROLLED ECONOMY DUMPING IN PERSPECTIVE

Application of the Antidumping Act of 1921 to imports from state controlled economy countries has a long history. Traditionally, Treasury has taken the position in such cases that neither foreign market value (based on sales in the home market or to a third country) nor constructed value (based on costs of materials, labor and fabrication) constitute a reliable basis for a value comparison. Instead, since at least 1960, the practice has been to establish the foreign market value for goods imported from a state controlled economy by reference to the price of such or similar goods that are manufactured in a western economy. The reflected value measure of foreign market value was first utilized in 1960 in "Bicycles from Czechoslovakia," 25 Fed. Reg. 6657 (1960), where it was concluded that home market prices were not a reliable indicia of home market value.

The reflected value test did not have specific support in the language of the 1921 Act at the time it was adopted by Treasury.[2] However, there do not appear to have been any judicial reviews of the Treasury's authority to adopt a reflected value measure of foreign market value in controlled economy dumping cases and the Treasury regulations, as amended through 1973, provided as follows:

"*Merchandise from controlled economy country:* Ordinarily, if the information available indicates that the economy of the country from which the merchandise is exported is controlled to an extent that sales or offers of sales of such or similar merchandise in that country or countries other than the United States do not permit a determination of fair value under § 153.3 or § 153.4, the Secretary will determine fair value on the basis of the constructed value of the merchandise determined on the normal costs, expenses, and profits as reflected by the prices at which such or similar merchandise is sold by a non-state-controlled-economy country either (1) for consumption in its own market; or (2) to other countries, including the United States. [19 C.F.R. § 153.3(b) (1973)]"

While § 153.5(b) utilizes the phrase "constructed value," it is clear that the principal referent is the price of the same or similar article which is presumed to reflect normal costs, expenses and profits.

The reflected value measure was, therefore, well established as a Treasury "practice" in 1974 when Congress amended the Antidumping Act by adopting new § 205(c), which provides that in state controlled economy cases:

"The Secretary shall determine the foreign market value of the merchandise on the basis of the normal costs, expenses and profits reflected by either—

(1) The prices determined in accordance with subsection (a) and section 202, at which such or similar merchandise of a non-state-controlled-economy country or countries is sold either (A) for consumption in the home market of that country or countries, or (B) to other countries, including the United States; or

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[1] We have recently learned that golf cars are also produced in Italy.

[2] However, Treasury could point to a precedent in the 1913 Tariff Act which defined "actual market value" almost precisely the same as "foreign market value" in the 1921 Act. In the calculation of either amount, the critical referent was the price of the same or similar goods in the home market. The 1913 Act also provided, however, that where the goods were not "freely offered" in the home market, then the actual market value was to be determined by reference to the price of the same or similar imported product sold in the United States. (See 38 Stat. 187–188, para. L.) Thus, the concept of a reflected value has had statutory sanction for at least sixty years.

(2) The constructed value of such or similar merchandise in a non-state-controlled-economy country or countries as determined under section 206."

This amendment confirmed the existing Treasury practice. See Trade Reform Act of 1974, A Report of the Senate Committee on Finance, No. 93–1298, November 26, 1974, at 174. (Hereinafter cited "1974 Sen. Rep. at ——.")

C. THE DETERMINATION OF FOREIGN MARKET VALUE IN THIS CASE

During the less than fair value phase of this proceeding, Treasury utilized the reflected value measure of § 205(c)(1) by establishing foreign market value on the basis of the price of the Marathon golf car (the "same or similar" product) produced in Canada.[3] This referent was in fact suggested by counsel for Pezetel (see letter from Bruce Clubb, a partner in Baker & McKenzie, dated November 18, 1974, attached as Annex A). Adjustments were made to take cognizance of differences in production levels between Pezetel and Marathon (the "economy of scale adjustments") and for other circumstances of sale. Based on the foreign market value thus derived. Treasury found that all sales of Melex golf cars during the period of investigation were at less than fair value and that importations beginning March 14, 1977, were subject to withholding of appraisement.

Pezetel now contends, however, that Treasury should use the reflected value test or the constructed value test, whichever is lower, where § 205(c)(1) is invoked because of the nature of the economy of the exporting country. Otherwise, it is contended, the fair value test will not take account of comparative manufacturing cost advantages enjoyed by Poland. (Soltysinski Memo, at 3–5, 7–8.) For these reasons, Professor Soltysinski argues that the hypothetical Marshall Study of projected costs in Canada should have been adopted as the measure of foreign market value on the grounds that it is a "constructed value" which is lower than the "reflected value." We perceive these reasons for rejecting this argument: (i) Treasury practice has always been to utilize a price referent as the best evidence of foreign market value and to resort to constructed values only in the absence of actual prices; (ii) the hypothetical Marshall Study is not evidence of costs and expenses on which to establish constructed value; if constructed value is to be employed, it should be based on Marathon costs; and (iii) Congress has decreed that Polish costs are irrelevant and not to be considered.

(i) *Prices are Preferred.*—Treasury practice has always been that prices are the preferable determinant of foreign market value and that constructed value is employed only when a value based on prices is not available. In fact, the Act ordinarily requires this practice, since § 202(a) permits the Secretary to resort to constructed value only where there is no foreign market value.[4] While it is true that § 205(c) is disjunctive, the Treasury "practice" has always been to utilize the price test (see Bicycles from Czechoslovakia) and it was this practice that was codified in the 1974 amendments. In this context, there is no merit to the Pezetel contention that § 205(c) must be interpreted so as to apply whichever of the two measures (price or constructed value) yields the lower foreign market value.

There are good reasons for the price test. First, prices in the marketplace may not always reflect total costs. Small or inefficient producers cannot price their product in actual transactions above the general price level and expect to make sales except in monopoly markets. Thus, prices, even of small producers reflect "normal costs" since abnormal costs resulting from inefficiencies are borne by the seller who cannot pass them on to the buyer in the form of higher prices.[5] Second, constructed value involves arbitrary minimum levels for general expenses and profits without regard to whether competitive marketplace pricing would allow such elements as a component of price. Finally, transaction prices are less subject to manipulation than are cost calculations with all the variables and allocations that are possible.

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[3] While the Trade Reform Act was not signed until January 3, 1975, eight months after the full scale investigation began, § 205(c)(1) was made applicable to pending proceedings. See Trade Reform Act, § 321(g).

[4] Dumping duties shall be imposed if the purchasing price ". . . is less than the foreign market value (or in the absence of such value, then the constructed value). . . ." § 202(a).

[5] This explains why we have always objected to the economy of scale adjustment in this proceeding. Since there are numerous sellers in the market, Marathon's extra costs if any, from small scale or inefficiency would not be reflected in its prices which would have to be competitive with those of the larger or more efficient producers.

(ii) *The Marshall Study is Hypothetical.*—Pezetel argues that the proper method of determining foreign market value would be to use constructed value based on the Marshall study. (Soltysinski Memo, However, that hypothetical study was not based on known or actual costs and is not a proper basis for establishing a constructed value under § 206 of the 1921 Act. Whatever the qualifications of the Marshall there is no brooking the fact that a study is no more than an opinion or best guess as to the cost and expenses that would be encountered in actual experience. Since § 206 is premised on the "best evidence available" test, Treasury should revert to a hypothetical constructed value only if no other basis is available.[6]

In this case, there is such a basis: that is, the actual costs of materials, fabrication and overhead of Marathon which like Pezetel was in the business of producing golf cars until at least 1974. From Pezetel's standpoint, this may not be a satisfactory referent since we understand that Marathon's costs, when it was producing golf cars exceeded the price its car commanded in the market. However, if a constructed value is to be utilized, it is clear that the best evidence of what it costs to build a golf car in a free world economy other than the United States is the actual cost experience of a third country manufacturer. Hypothetical costs, such as those projected in the Marshall Study, are the least persuasive evidence of constructed value and should be only utilized as a final resort which is not necessary here.

(iii) *Polish Costs are Irrelevant.*—The premise of § 205(c) is that neither prices nor costs in controlled economies are reliable indicia for comparison purposes. This is a Congressional judgment that is not subject to review or modification by Treasury. A question has been raised, however, whether Treasury should attempt to assess costs by constructing a value in an economy most like Poland's that is not state controlled. In my opinion, the answer to this question is that there is no reliable basis on which to compare Poland's economy with a free world economy for purposes of finding a comparable cost basis for foreign market value. For example, wage levels in Poland may be statistically lower than in free world economies, but this could be attributed to the fact that the state provides free education or medical care, costs that are often a burden on wages in western economies. Materials costs may be subsidized or even impossible to calculate according to ordinary accounting principles, a consideration that is at the heart of § 205(c). Moreover, even if indicia could be developed to find the comparable free world economy in a state controlled economy dumping case, Treasury would still be required to construct a value from hypothetical costs and expenses which could never be defended as the "best evidence" where prices set in a competitive marketplace were available.[7]

D. GOLF CARS ARE CURRENTLY PRODUCED IN JAPAN

We have previously objected to the use of Marathon prices as the foreign market value referent in the liquidation phase of this proceeding primarily because that company has not produced a golf car since 1974 and even then it was a marginal producer. Accordingly, we have urged that the prices of a domestic producer be utilized for the purpose of determining foreign market value and that E-Z-Go be selected as the referent, since the Melex golf car is virtually the same merchandise. Such a comparison is required by current regulations and § 205(c) where there is no other adequate basis for determining foreign market value.

At the meeting on October 14th, a question was raised whether there might be an alternative to either projected forward Marathon or domestic prices and I remarked that golf cars had been produced in Japan several years ago and current information on the status of such production would be provided. Since then, I have determined that there currently are at least four manufacturers of golf cars in Japan where there is an expanding domestic market.

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[6] The infirmities of the Marshall Study are discussed at length in submissions to Treasury in the less than fair value proceeding.

[7] A comparable economy evaluation might be feasible when the article from the state controlled economy is produced in more than one free world economy and the question to be resolved is which country prices are to be utilized as the referent. Traditionally, articles produced in Western European countries have been selected as the referent when detrmining the foreign market value of the same or similar articles produced in an Eastern European country.

It is our understanding that the producers of golf cars in Japan and prices charged are as follows:

Producer	Price to dealer	Fleet list	Fleet actual
Yamaha: 4 wheel gas	$2,047.24	$2,952.75	$2,559.05
Baihatsu (Masters):			
4 wheel electric	2,235.29	2,992.12	2,637.79
3 wheel electric	NA	2,598.42	NA
Shatai Kogyo: 3 wheel electric	2,185.04	2,736.22	2,440.94
Nissan (Sunmate): 3 wheel electric	2,205.88	2,941.18	NA

Further information about these producers will be supplied if Treasury regards additional inquiry to be appropriate.

E. IF JAPAN OR OTHER THIRD COUNTRY PRICES ARE NOT AN APPROPRIATE REFERENT, SECTION 205(C) REQUIRES THE USE OF UNITED STATES PRICES

We have constantly argued that the Treasury must utilize the United States prices of golf cars as the referent in this proceeding if sales in a third country do not provide an adequate basis for comparison. In contrast, Memorandum dated October 13, 1977, from Professor Soltysinki and Mr. Schwarz challenges the authority of Treasury to adopt such a measure of foreign market value.

In essence, Soltysinski and Schwarz argue that the insertion of the words "including the United States" in two clauses of § 153.7 of the Antidumping Regulations constitute a "startling new principle of antidumping law" (Memorandum at 4) that is unauthorized because: (a) Congress specifically, they argue, rejected such a test in amending the Antidumping Act in 1974; and (b) the Senate Report which contains language wholly supportive of § 153.7 was a "gratuitous addition" without basis in law or fact and was inserted under "unknown" circumstances. Neither point has any merit.

(i) *S. 2374.*—The Memorandum urges the proposition that § 153.7 of the Regulations adopts a measure specifically rejected by Congress when it failed to adopt S. 2374 which had been introduced by Senator Carl Curtis (R. Nebr.), a member of the Senate Finance Committee. The origin of the Curtis Bill was straightforward. The Cushman division of Outboard Marine Corporation ("OMC"), located in Lincoln, Nebraska, which had produced golf cars for many years, became concerned about Melex imports in 1973. Its local attorney, worried that the Act might not cover the case where a state controlled economy company sold a product in this market and nowhere else, and where there were no third country producers, drafted a proposed amendment to the Act for consideration by Senator Curtis. After redrafting, S. 2374 was introduced and referred to the Senate Finance Committee in September, 1973.

In February, 1974, OMC requested the undersigned to consider whether an action under the Antidumping Act was likely to have any success. Our research indicated this was a unique case because of what appeared to be a single market for golf cars and that proof would be easier if S. 2374 were adopted. Accordingly, we assisted OMC in its testimony before the Senate Finance Committee on March 28, 1974, and subsequently worked with the Staff of the Committee although it is somewhat of an exaggeration to claim that we "lobbied strongly" in favor of passage of S. 2374. In fact, because of subsequent events, we regarded S. 2374 as unnecessary and so advised both the Senator and Committee staff.

This occurred, however, not because of a mysterious appearance of language in a Senate Report, as Soltysinski and Schwarz argue, but because we received advice from Treasury that settled the problem of the referent where the goods were not produced anywhere but the United States and a state controlled economy. Following the appearance before the Senate Finance Committee, Mr. Fisher and I met with Ben L. Irwin, Director, Office of Tariff and Trade Affairs to inquire whether an antidumping complaint, in circumstances we felt were present, would be cognizable by Treasury. In response to this inquiry, Mr. Irvin wrote to us as follows:

"Although Treasury practice has been to look to prices at which such or similar merchandise is sold in a third country, the phrase "non-State-controlled-

economy country" certainly embraces the United States. Accordingly, similar merchandise in the United States market could be used for comparison purposes if a situation were to arise where the Merchandise under investigation is sold only in a State-controlled-economy country and the United States." (See Annex B.)

Based on this advice, we prepared and submitted the antidumping complaint against Melex golf cars in late April 1974. A copy of the Irvin letter was attached to the complaint and has been in the public file ever since.[8]

Copies of the Irvin letter were delivered to the Senate Finance Committee staff both separately and as part of the OMC complaint. We had no ulterior motive for this action, but since we had supported S. 2374 it seemed appropriate to alert the staff to the Treasury interpretation of existing law and practice which made further legislation unnecessary. A copy of the complaint, including the Irvin letter, was also furnished to Senator Curtis. As a result, S. 2374 was not regarded as necessary when the Senate Finance Committee held "mark-up" sessions on the Trade Reform Act in the late fall 1974 and it was not adopted.[9] In view of this chronology, there is absolutely no warrant for the view that S. 2374 was "rejected" by Congress.

In fact, since the amendments to the Antidumping Act ratified existing Treasury practice in the case of state controlled economy dumping cases, one codified element of that practice was reflected in the Irvin letter which had been made available to the Senate in advance of the markup sessions. It seems likely that this was responsible for the language[10] in the Senate Report that Messrs. Soltysinski and Schwarz find so mysterious. This language, unanimously adopted by the seventeen members of the Committee, cannot be described as "curious" or "gratuitous," but rather as an expression of the meaning of § 205(c) intended by the Senate. In short, we submit that the legislative history compelled the Treasury to adopt § 153.7 in 1976.

Soltysinski and Schwarz find it "interesting" that I suggested the language in the last sentence of § 153.7 in a letter dated October 30, 1975, and that it is "worth noting" that my letter does not indicate my interest in these proceedings. At the time, I thought, the Melex matter was past history since Treasury had issued a final determination and the U.S. International Trade Commission had issued its opinion finding injury six weeks previously. Moreover, my letter was in response to a request for public comments. While I assume from your comments on October 14th (which I appreciate) that Treasury will ignore this and other implied criticisms that occur in the Soltysinski and Schwarz Memorandum, I do want my objection to these illusions to be a matter of record.

F. THE "SAME OR SIMILAR" ARGUMENT

Mr. Schwarz in his letter of October 13, 1977, argues that the Trade Reform Act in amending the definition of "such or similar merchandise" specifically intended that another manufacturer's product would never be used for purposes of determining foreign market value. This definition, however, does not apply in the case of state controlled economies, because § 205(c) specifically provides that in such circumstances the Treasury shall use the prices by which another manufacturer in a free world economy sells the merchandise in question. In short, the amendment to § 212(3) of the Antidumping Act did no more than clarify the priorities to be used in determining foreign market value in the case of those products produced in countries where home market price is a relevant consideration. Since such prices are not available in state controlled economy cases, the priorities in § 212(3) are not relevant. It would be absurd for Treasury Department to construe § 205(c) as having been negated in its entirety by § 212(3). Both the House and Senate specifically intended that Treasury's existing practice of using third country (i.e. other producer) prices for purposes of establish-

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[8] Mr. Schwarz argued at the October 14th meeting that this letter was obtained in an ex parte meeting and that this compromised its value. However, the letter has been a matter of public record for over three years and, presumably, was known to Pezetel's counsel during the less than fair value aspect of this case.

[9] In fact, Senator Curtis wrote Secretary Simon on Dec. 20, 1974, that after OMC filed its complaint "it appeared the Melex matter would be resolved administratively and legislative relief would not be necessary."

[10] "The amendment is intended to permit comparison . . . with the prices of such or similar merchandise produced in the United States in the absence of an adequate basis for comparison using prices in other non-State-controlled economy countries." 1974 Sen. Rep. at 174.

ing foreign market value of goods produced in a state controlled economy be continued.

CONCLUSION

In summary, it is the position of the domestic manufacturers represented by the undersigned that § 205(c) requires the foreign market value of Melex golf cars to be determined by reference to the price of the same or similar article produced in a third, free economy country, which may include Japan or Italy, unless such prices are not an "adequate basis" for comparison, in which event, United States prices must be used. No adjustment should be made for so-called "economies of scale" since prices in a competitive market reflect only normal costs with any abnormal costs of inefficiency or scale being borne by the seller. Finally, Treasury should reject the challenge to the validity of § 153.7 of its regulations.

Consistent with the ex parte policy described at the meeting on October 14th, copies of this letter have been mailed to the recipients listed below.

Sincerely,

CHARLES OWEN VERRILL, Jr.

BAKER & MCKENZIE,
ATTORNEYS AT LAW,
November 18, 1974.

Mr. R. N. MARRA,
Director, Duty Assessment Division, U.S. Customs Service, Department of the Treasury, Washington, D.C.

DEAR MR. MARRA: This letter and its attachments constitute Pezetel's initial response to the Antidumping Complaint concerning Polish golf cars, filed on April 29, 1974 on behalf of the Outboard Marine Corporation. Additional information will be supplied upon request.

At the outset, counsel for Pezetel wish to point out that the complaint of Outboard Marine Corporation contains numerous inaccuracies which create a misleading picture of the golf car market in the United States. This matter is more fully discussed in Exhibit I which contains a description of the errors in the complaint. Exhibit I also contains a technical comparison between the Outboard Marine Corporation (Cushman) and the Pezetel golf cars which demonstrates the considerable physical and manufacturing differences between the two cars and shows why the cost of production of the Cushman car cannot be used as a Fair Value Standard for the Pezetel car as requested in the complaint.

Finally, counsel for Pezetel contend that, when Pezetel's sales in the United States are placed in proper perspective, it is clear that Pezetel is not selling at Less Than Fair Value no matter what Fair Value standard is used, and that there is no likelihood that an industry in the United States will be injured. Accordingly, counsel request that this proceeding, which has already resulted in great commercial hardship to Pezetel, be terminated.

The legal and factual basis for this request is set out below.

I. THE ANTIDUMPING ACT OF 1921

The Antidumping Act and Regulations provide in substance that when the Treasury Department receives a complaint that a foreign product is being sold in the United States at Less Than Fair Value, the Customs Service must determine what the Fair Value of the imported product is, and whether the actual prices charged are less. Accordingly, the first question in this case is what is the Fair Value of Pezetel golf cars. The Act provides that Fair Value shall be the first of the following which can be determined.

(A) Foreign Market Value based upon home market sales, i.e., the price at which Polish golf cars are sold in Poland;

(B) Foreign Market Value based upon third country sales, i.e, the price at which Polish golf cars are sold for export to countries other than the United States;

(C) Constructed Value, i.e., the sum of the costs of materials, fabrication, general expenses and a normal amount of profit.

Under the Act one of these must be selected as the Fair Value. Pezetel's position with respect to each of these is set out below.

II. WHAT FAIR VALUE SHOULD BE USED IN THIS CASE?

A. Foreign market value based upon home market sales

The Customs Service has apparently determined that Foreign Market Value based upon home market sales cannot be determined in this case. Counsel for Pezetel agree with this determination.

B. Foreign market value based upon third country sales

The next basis for Fair Value provided by the Act is Foreign Market Value based upon sales to third countries. Here, the determination to be made is whether Polish golf cars are sold in the usual wholesale quantities, in the ordinary course of trade, and in the principal markets of countries other than the United States.

As demonstrated in Exhibit II, Pezetel sells golf cars, in commercial transactions meeting the statutory criteria described above, to buyers in Canada. Accordingly, counsel contends that the proper basis for Fair Value in this case is the Foreign Market Value based upon the price at which Pezetel sells to buyers in Canada.

As shown in Exhibit II, Pezetel's prices to Canadian purchasers are the same as Pezetel's price to buyers in the United States. Thus, Pezetel is not selling at Less Than Fair Value.

III. CONSTRUCTED VALUE

Counsel do not agree that it is necessary to resort to Constructed Value in this case. Moreover, we believe that the Regulation providing the method of calculating Constructed Value for State-controlled economies is invalid. Finally, even if that invalid Regulation is applied in this case, it is clear that there have been no sales at Less Than Fair Value. These matters are discussed below.

A. There is no need to resort to constructed value

Counsel for Pezetel contend that there is no need for the Treasury Department to resort to Constructed Value in this case. That can be done only when the economy of the exporting country is controlled to such an extent that its prices cannot be used as a basis for Fair Value.

Thus the Customs Service Regulations, 19 C.F.R. § 153.5 (b), provide that:

"Ordinarily, if the information available indicates that the economy of the country from which the merchandise is exported is controlled to an extent that sales or offers of sales of such or similar merchandise in that country or to countries other than the United States do not permit a determination of fair value under § 153.3 or § 153.4, the Secretary will determine fair value on the basis of the constructed value of the merchandise. . . ."

Counsel contend that, while Poland's economy is centrally planned, it is not "controlled to an extent that" Fair Value cannot be determined in the normal fashion. Pezetel, although State-owned, must show a profit. Since it is as profit oriented as large corporations in Western market countries, its sales to third countries, in this case Canada, should be used as a basis for determining Fair Value as the law and regulations provide.

B. The regulation is invalid

The Customs Service Regulations (19 C.F.R. § 153.5(b)) provide that, in the case of controlled economy counties, Constructed Value will be:

"Determined on the normal costs, expenses and profits as reflected by the prices at which such or similar merchandise is sold by a non-State-controlled-economy country either (1) for consumption in its own market; or (2) to other countries, including the United States."

First, we do not believe that this regulation is authorized by the Antidumping Act, since it uses the price at which similar merchandise is sold in an unrelated market by a different producer as the Fair Value of Polish products. Further, this regulation not only conflicts with the Act, but it is in conflict with basic foreign trade theory as well.

Foreign trade theory indicates that in order to export, a country must have a comparative advantage in the production of the product to be exported, e.g., it must have lower land, labor or material costs. This advantage is reflected in the price which the producing country charges for the article, and because of this each country tends to produce for export those items in which it has an advantage and can sell at the lowest price.

This regulation nullifies any advantage in the production of a product by an exporter in a centrally planned economy because it forces that exporter to charge a price in the United States which is at least as high as that of a producer in another country. Accordingly, a producer from a centrally planned economy (such as Pezetel), unlike a producer in a Western market country, can never be the lowest price seller of a product in the United States. For this reason producers from centrally planned economies will be prevented from effectively competing in the United States market no matter how efficient they might be or how low their actual costs of production are.

C. Even applying the regulation there are no sales at less than fair value

Nonetheless, in an effort to cooperate as fully as possible with the Customs Service in this matter, we have gone to the trouble and expense of conducting a world-wide survey of golf car productions. The time needed to conduct this survey was significant, and has delayed our response.

We found that golf cars are produced in Brazil, Mexico, Japan and Canada, as well as in the United States. The markets of Brazil, Mexico and Japan are all so small and protected that they do not provide a suitable basis for comparison. Any cars produced in such a market will, of course, be sold at grossly exaggerated prices. Moreover, since none of these countries exports golf cars to the United States, a comparison using them would result in Pezetel being compared with a manufacturer which is demonstrably non-competitive in the United States.

Thus, the only comparison which makes any economic sense is that with a producer which has demonstrated that it is competitive by exporting to the United States. We are informed that in recent years the Marathon Company of Montreal, Canada has produced about 250 cars per year for sale in Canada and for export to the United States at a price of $885 per car. When the appropriate adjustments for economies of scale and other differences between the two cars are made it is clear that the Pezetel car is being sold at well above this Fair Value standard.

In Exhibit III we have set out a detailed comparison between the price of the Pezetel and Marathon cars.

IV. PEZETEL SHIPMENTS

Finally, you have asked for a complete description of Pezetel shipments and prices during the period under investigation. That information is attached as Exhibit IV.

If you need any additional information, please do not hesitate to contact us. In addition, if the Customs Service should determine to reject any of the prices or adjustments quoted in the Exhibits to this letter, the privilege of a conference is requested.

Very truly yours,

BRUCE E. CLUBB.

Enlosures.

OFFICE OF THE SECRETARY OF THE TREASURY,
Washington, D.C., April 19, 1974.

MR. BART FISHER, ESQ.,
Patton, Boggs & Blow,
Washington, D.C.

DEAR MR. FISHER: I wish to take this opportunity to summarize our recent discussion with you and Mr. Verrill on April 10. Your concern was that the current Antidumping Regulations and the proposed Trade Reform Act would not permit the Antidumping Law to be applied in a situation where merchandise exported to the United States from a State-controlled-economy country is manufactured only in that country and the United States. You felt that under such circumstances no third country prices for similar merchandise for comparison purposes would exist.

Our experience indicates that this situation has never arisen to date. Moreover, in the particular case you brought to our attention concerning golf cars manufactured in Poland, information supplied to us by the U.S. Customs Service suggests that similar golf carts are produced not only in Poland and the United States, but in Japan as well. Thus, Japanese carts may well be able to be used for fair value comparisons, with appropriate adjustments as provided in our Regulations.

As we mentioned to you in our discussion, the Treasury Regulations and the proposed Trade Reform Act provide for the use of United States costs as reflected by selling prices in the United States if the occasion were to arise where a similar product is not manufactured in any non-State-controlled-economy country other than the United States. Section 153.5(b) of the Antidumping Regulations, in dealing with antidumping investigations of imports from State-controlled-economy countries, provides that fair value comparisons are to be made between the prices to the United States of merchandise of a State-controlled-economy country and the prices at which merchandise ". . . is sold by a non-State-controlled-economy country . . . for consumption in its own market. . . ." Although Treasury's practice has been to look to prices at which such or similar merchandise is sold in a third country, the phrase "non-State-controlled-economy country" certainly embraces the United States. Accordingly, similar merchandise in the United States market could be used for camparison purposes if a situation were to arise where the merchandise under investigation is sold only in a State-controlled-economy country and the United States.

Sincerely,

BEN L. IRVIN,
Director, Office of Tariff and Trade Affairs.

PATTON, BOGGS & BLOW,
Washington, D.C., April 22, 1977.

Re Electric golf cars from Poland—T.D. 75-288.

MS. LINDA POTTS,
Assistant to the Director of Tariff Affairs,
U.S. Department of Treasury,
Washington, D.C.

DEAR MS. POTTS: By letter dated April 20, 1977, the Treasury Department advised the undersigned that the time for submitting views and information on the proposed liquidation of duties in the above captioned proceeding for the year 1976 would be extended to and including April 22, 1977. This letter of comment and views is submitted on behalf of certain domestic manufacturers of golf cars which have previously participated in this proceeding.

I. INTRODUCTION

This proceeding was initiated in May 1974, when a complaint pursuant to the Antidumping Act of 1921, 19 U.S.C. § 160 et. seq. (herein the "Act") was filed with the U.S. Customs Service alleging that electric golf cars produced by Pezetel (a foreign trade enterprise of the People's Republic of Poland) under the brand name Melex were being sold in the United States at less than fair value ("LTFV"). Following the Customs Service investigation, the Treasury Department, on June 16, 1975, notified the U.S. International Trade Commission ("USITC") that 100 percent of the Melex golf cars imported during the period of investigation (December 1973 through September 1974) were sold at less than fair value. Hearings were held by the USITC in August, 1975, and on September 16, 1975, a determination was issued that an industry in the United States was being injured by reason of these LTFV sales.

Notwithstanding the Treasury and USITC findings under § 201 of the Act, no special dumping duties have been levied, collected and paid pursuant to § 202 of the Act, although appraisement has been withheld with respect to all Melex golf cars entered or withdrawn from warehouse since March 16, 1975.

We understand that Treasury is now prepared to authorize the Customs Service to liquidate duties for 1976 based upon a preliminary calculation of foreign market value for the months of January through September and a different value for the months of October through December, 1976. Further, we understand that Treasury proposes to compare the foreign market values to the exporter's sales price. For the reasons stated in Part II below, we take exception to the proposed calculation of foreign market value.

II. THE EXPORTER'S SALES PRICE

Prior to the initiation of this proceeding, Pezetel had entered into agreements with unrelated domestic dealers pursuant to which Melex golf cars were shipped f.o.b. Polish port against letters of credit. However, it is our information that

shortly after the withholding of appraisement notice on March 16, 1975, new agreements were reached between the domestic dealers, Melex, U.S.A. Inc., a wholly owned domestic subsidiary of Pezetel, and Pezetel. Under the revised agreements, the domestic dealers agreed to purchase Melex golf cars f.o.b. ports in the United States from Melex U.S.A. The unit price to the domestic dealers was increased under the revised agreements to include, inter alia, ocean freight, U.S. import duties, marine insurance, and customshouse agent fees.

The revision of the agreements in 1975 had effect of shifting the liability for any subsequent antidumping duties from the domestic dealers to Melex U.S.A., which become the exporter of the golf cars pursuant to § 207 of the Act. Moreover, while the revised agreements provided for an increase in price, a substantial portion of the difference reflected the fact that Melex U.S.A. was required to pay the cost of ocean shipping, import duties, marine insurance, customshouse agent fees, and other charges that had previously been paid by the domestic dealers.[1] As a result, Pezetel continued to sell (through Melex U.S.A.) Melex golf cars to domestic dealers at prices that are probably below the cost of production of similar domestic golf cars and thus the domestic Melex dealers have continued to enjoy an unfair advantage in competition with the distributors of domestic golf cars.

This is ironic in that the exporter's sales price provisions of the Act were obviously designed to prevent manipulation of prices between foreign manufacturers and domestic subsidiaries so as to avoid dumping charges. Specifically, § 207 provides that where a foreign manufacturer transfers goods to a U.S. person with which it has a control relationship, the controlling price for Antidumping Act purposes is the first sale by the domestic person to an unrelated purchaser in the U.S. market. Ordinarily, the exporter's sales price calculation is designed to prevent a foreign manufacturer from selling its products to a domestic subsidiary at a high price for the purpose of clearing Customs with the subsidiary then selling at dumping prices to the domestic market. While the domestic subsidiary in these circumstances could operate at a loss, the net effect to the manufacturer is exactly the same as though it had sold the product to the domestic market at dumping prices, but because the border transaction with the U.S. affiliate was at a fair value, there would not be any liability for a dumping duty.

In the present case, however, this statutory measure is not having the intended effect. The 1975 contract revisions provide that the first unrelated U.S. transactions in Melex golf cars are between Melex U.S.A. and the domestic dealers, which insures that the latter would not be liable for any antidumping duty. Furthermore, the arrangement allows Melex, U.S.A. to sell Melex golf cars to the domestic dealers at prices not substantially in excess of those that prevailed during the period of investigation plus the cost of importation to the United States. This arrangement, of course, entails the risk that Melex, U.S.A. would be required to pay any dumping duties assessed pursuant to the Act. However, even if Melex were required to pay the duty, it would still be able to remit to Pezetel substantial hard currency earnings which are probably more valuable to Pezetel than any recoupment of cost in the normal free world economy accounting sense. By the same token Pezetel and Melex would be able to ensure a steady sale of their vehicles in the United States market because of the price advantage such vehicles enjoy over domestically produced golf cars.

While we have not been able to find authority in the Act for utilization of the purchase price method of duty assessment where it appears that the exporter's sale price method is the result of actions designed to avoid antidumping duties at the transaction level which would ensure that imported merchandise is sold at fair value, we urge Treasury to take into account in its calculations the fact that any dumping duties assessed in the present case may not have the effect of eliminating unfair pricing.

III. COMMENT ON THE CALCULATION OF FOREIGN MARKET VALUE

It is our understanding that for the purpose of liquidating assessments against Melex golf cars imported in 1976, Treasury intends to utilize as the fair value

[1] The 1976 price was $815 f.o.b. U.S. dock, or $330 more than the 1973 contract price f.o.b. Polish port. However, the difference is accounted for in large part by the fact that the price now reflects the costs of importation, additional warranty and advertising benefits, and new features. See pages 8–11 of a letter from the undersigned Peter O. Suchman, Deputy Assistant Secretary, dated August 5, 1975.

referent the sales price of the Model M–151 utility car manufactured by Marathon Golf Car, Ltd., Montreal, Canada. We are further informed that Treasury has evidence that that during the first nine months of 1976, Marathon sald twelve Model M–151 utility vehicles to end users for $2,490 (Canadian) and during the last three months sold thirty-one such vehicles to a U.S. concern at a different, and lower, price. Accordingly, 1976 appraisements will be based on two supposedly different foreign market values. As will be shown subsequently, however, Marathon charged all purchasers in 1976 the same price, but remitted the internal consumption taxes on export sales.

A. Foreign Market Value: January through September 1976

During this nine month period, Marathon sold twelve Model M–151 utility vehicles at a price of $2,490 (Canadian). Based on these transactions, Treasury proposes to compute foreign market value as follows:

Sales price	$2,490.00
Less batteries and chargers	342.00
25 percent dealer discount	537.00
Federal sales tax	159.00
Subtotal	1,451.89
Adjustment: materials and labor	225.00 to 275.00
Economy of scale	175.00 to 210.00
Assembly	17.00
Subtotal	986.83
Plus seat brake	33.00
Credit	5.00 to 20.00
Advertising	1.00 to 5.00
Subtotal	1,032.00
Adjustment: Canadian dollar	4.00
	1,028.00
Less selling prices	60.18
Net	967.82

We object to certain of the foregoing adjustments for the following reasons:

(i) *Batteries and charges.*—We understand that the Melex golf car is sold by Melex, U.S.A. to domestic dealers without batteries and charger, whereas these items are included in the price of the Marathon Model M–151. Accordingly, Treasury is justified in making an allowance for this difference in the merchandise pursuant to § 153.11 of the Antidumping regulations. However, the amount of the allowance must be limited to the value of the components that constitute the difference. According to our information, which will be substantiated by affidavit if requested, the cost to a domestic golf car dstributor of an Exide EV–88 battery (the grade normally utilized in golf cars) in 1976 was $24.57 f.o.b. distributor's place of business, or a total of $147.42 for the six batteries required by a golf car. The 1976 distributor cost, f.o.b. place of business, for a charger manufactured by Lester, Mack, or E-Z-Go was $92.00. Therefore, the sum of the cost of six batteries and a charger, in 1976, was $239.42, which should be the maximum allowance for these items and not $42. Thus, the Treasury adjustment in the above calculation is $103.00 in excess of the actual cost which would be incurred by a domestic dealer.

(ii) *Dealer Discount.*—Since the fair value is being determined by reference to the price of the M–151 utility car, the dealer discount should be that which is normally granted by Marathon in order to meet the requirements of a level of trade allowance permitted by § 153.15 of the regulations. The undersigned was advised on April 21, 1977, by Mr. Louis Gyori, President of Marathon, that the Company does not have a distributor network and sells the Model M–151 to both distributors and end users on a random basis. Mr. Gyori stated, however, that on sales to recognized distributors for resale, a discount of twenty percent (20%) is granted. Accordingly, if an allowance is to be made pursuant to § 153.15 of the regulations, it is incumbent on Treasury to utilize the twenty percent (20 per-

cent) figure actually granted by Marathon and not the twenty-five percent (25 percent) used in the preliminary calculation.

(iii) *Federal Sales Tax.*—The government of Canada imposes a twelve percent (12 percent) consumption tax on manufactured merchandise at the manufacturing level, but this tax is rebated on sales to foreign countries. Treasury has consistently made allowance for the amount of the federal sales tax in computing fair value, and we have consistently opposed such an adjustment. Under § 205(c) of the Act, the premier fair value referent in cases involving merchandise from state controlled economies is the price at which such or similar merchandise is sold for consumption in the home market of a non-state controlled economy. Since Treasury has utilized the price of the Canadian Marathon utility car as the fair value referent, the price of that vehicle for consumption in Canada, which includes the twelve percent consumption tax, should be utilized.

Moreover, the rebate or remission of the consumption tax on export clearly falls within the definition of a bounty or grant pursuant to 19 U.S.C. § 1303 as construed by the United States Customs Court in *Zenith Radio Corporation* v. *United States*, No. 76-3-00637, decided April 12, 1977. The taxes at issue in *Zenith* and the Canadian consumption tax are both levied at the manufacturing level and are rebated or remitted on exportation from the country of manufacture. In these circumstances, it would be anamolous to grant an allowance for a tax rebate in an antidumping proceeding where the same rebate would be regarded as a countervailable bounty or grant in a § 303 proceeding.

(iv) *Materials and Labor.*—The preliminary Treasury calculation of fair value provides for an allowance of $225–275 for materials and labor. We assume this allowance is based on the fact that the M–151 utility car has a rear facing seat instead of a rear deck and holding devices for golf bags. Mr. Gyori has advised the undersigned that this feature is all that distinguishes the M–151 from a golf car and that the cost of materials and labor for the rear facing seat is $70. Thus, while a difference in merchandise allowance pursuant to §153.11 of the regulations is appropriate, the amount of the adjustment should be $70 (the cost to Marathon) and not the $225–275 figure used in the Treasury calculation.[2]

Moreover, the $70 cost for the rear facing seat should be offset by the cost of the rear deck and golf bag holding devices that are standard equipment on the Melex golf car. While we do not have a detailed cost estimate for the bag deck, there is evidence in the record of this proceeding that the labor and materials cost for this assembly to a domestic manufacturer in 1975 was $18.21. (See Annex A to letter from the undersigned to the Commissioner of Customs, dated January 29, 1975.) Since this cost can be expected to have increased since 1975, it should be adopted as the minimum cost of the bag deck assembly and would, therefore, reduce the difference in merchandise allowance to $51.79.

(v) *Economy of Scale.*—We have consistently objected to an allowance for alleged economies of scale in calculating fair value based on the selling price of the Marathon vehicle. While § 202(b) of the Act [which is incorporated by § 205(c)], provides for certain adjustments in calculating fair value, there is no authority for adjustments based on alleged differences in the cost of producing the same merchandise. The permitted allowances are as follows:

(a) § 202(b)(1) of the Act and § 153.9 of the regulations authorize an allowance for price discounts based on differences in quantities sold, but only if it can be demonstrated that the discounts are warranted on the basis of savings attributable to the quantities involved. § 153.9(b)(2). This acknowledges that a manufacturer will often sell large quantities at different prices than small quantities because seller cost savings are likely to result from quantity sales. However, this allowance has no relation to production cost differentials between different manufacturers of the same or similar merchandise.

(b) § 202(b)(2) of the Act of § 153.10 of the regulations authorize an allowance for "differences in circumstances of sale." The regulations make clear, however, that differences in the cost of production of the same or similar merchandise is not a difference in circumstances of sale. For Example, § 153.10(b) states:

"Examples of differences in circumstances of sale for which reasonable allowances generally will be made are those involving differences in credit terms,

[2] That $70 is a realistic figure is illustrated by the fact that Pezetel argued in the fair value stage of this proceeding that the materials cost in Canada of a golf car seat was $28.00. See Exhibit II of the Baker & McKenzie Statement, dated May 5, 1975, to the Commissioner of Customs.

guarantees, warranties, technical assistance, servicing, and assumption by a seller of a purchaser's advertising or other selling costs."

Thus, the circumstances of sale allowance is justified only where there are differences in selling methods, selling techniques, sale terms and other factors associated with the sale of the merchandise. Such factors have no relation to economies of scale which are associated with circumstances of production of the same or similar merchandise.[3]

(c) § 202(b)(3) of the Act and § 153.11 of the regulations authorize an allowance for differences in the merchandise under consideration. It is clear, however, that this allowance is limited to the cost of manufacture of those aspects of the merchandise that are different. The Senate Report on the 1958 amendment to the Act, which adopted § 202(b)(3), gives as an example an allowance for differences in merchandise the situation where long handled shovels are sold to the United States and only short handled, but otherwise identical, shovels are sold for home consumption in the country of exportation. (1958 U.S. Code Cong. & Adm. News 3504.) In this example the adjustment would be the difference in the cost of manufacture of a long handle and the cost of a short handle. This allowance, therefore, relates only to the cost of intrinsic differences in the articles or merchandise under comparison and not to differences in the cost of producing those articles to the extent they are similar. This construction is confirmed by §153.11 of the regulations which states:

"In this regard the Secretary will be guided primarily be differences in cost of manufacture if it is established to his satisfaction that the amount of any price differential is wholly or partly due such differences, but, when appropriate, he may also consider the effect on such differences upon the market value of the merchandise."

This allowance, therefore, is designed to permit an adjustment for differences between the merchandise to the extent that the differences themselves can be measured and a manufacturing cost calculated. To the extent the articles are the same, no such allowance is permitted under § 202(b)(3) of § 153.11.

(d) In summary, neither the Act nor the regulations authorize the Secretary to adjust foreign market value on the basis of alleged economies of scale. In fact, of course, the economy of scale adjustment contradicts the assumption that the Marathon car is a valid basis for comparison pursuant to § 205(c). In state controlled economy cases, the Secretary is authorized to utilize third country prices but only to the extent they are an adequate basis for comparison. If an economy of scale adjustment is necessary, it seems quite clear that the third country price does not constitute such an adequate basis. This is particularly so here since the economy of scale adjustment is based upon a speculative and hypothetical estimate of producing the Melex golf car in Canada on January 1, 1975.

(vi) *Selling Expenses.*—We can perceive of no basis for this adjustment of $60, which equals the entire sum of adjustments other than economies of scale claimed by PEZETEL counsel in the fair value stage of this proceeding. See Statement of Baker & McKenzie, dated May 5, 1975, to the Commissioner of Customs, page 23.[4]

B. Foreign Market Value: October through December 1976

During this period we are advised by Mr. Gyori that 31 M–151 utility cars were sold to RMS International, Inc., 1700 K Street, N.W., Washington, D.C., at a price of $2,191 (Canadian), a price which was determined by subtracting the twelve percent (12 percent) federal consumption tax from the standard price of $2,490. We understand that Treasury has computed the preliminary foreign market value by using the $2,190 price as the starting point and then deducting the same adjustments as with the $2,490 price, including an allowance for the federal tax. This is obviously in error since the tax had already been deducted in arriving at the $2,190 price. And, of course, we object to the other adjustments for the reasons stated above.

[3] This point is further supported by the fact that § 153.10 of the antidumping regulations effective July 25, 1976, eliminated a reference to production costs found in § 153.8(b) of the regulations supplanted by the revised regulations.

[4] The adjustments were for letter of credit ($5.04) warranty ($24.00), assembly ($41.75) and advertising ($19.36), or a total of $60.85.

IV. RE STATEMENT OF FAIR VALUE CALCULATION

We submit that the fair (or foreign market) value of the Melex golf car should be calculated, if the Marathon M–151 utility is the referent pursuant to § 205(c)(1)(a), as follows:

Sales price for home consumption	$2,490.00
Less 6 batteries and charger (pages 8–9 supra)	239.42
	2,250.58
Less 20 percent dealer discount (pages 9–10 supra)	450.12
	1,800.46
Less materials and labor (page 11 supra)	51.79
	1,748.67
Less assembly (Treasury calculation)	17.00
	1,731.67
Plus seat brake (Treasury calculation)	33.00
	1,764.67
Plus credit (Treasury calculation)	12.50
	1,777.17
Plus advertising (Treasury calculation)	3.00
	1,780.17
Adjustment Canadian dollar (Treasury calculation)	4.00
Fair Value	1,776.17

If the adjustment for the sales tax is allowed, it would decrease the fair value by $211.76 (12 percent × 1,764.69), leaving a net fair value of $1,564.41. However, no adjustment should be made for selling expenses or economies of scale for the reasons stated in Part III of this submission.

An alternate calculation would utilize the price at which the Marathon M–151 utility car was sold for consumption in the United States pursuant to § 205(c)(1)(B) and is as follows:

Sales price for U.S. consumption	$2,191.20
Less 6 batteries and charger (pages 8–9 supra)	239.42
	1,951.78
Less 20 percent dealer discount (pages 9–10 supra)	390.36
	1,561.42
Less materials and labor (page 11 supra)	51.79
	1,509.63
Less assembly (Treasury calculation)	17.00
	1,492.63
Plus seat brake (Treasury calculation)	33.00
	1,525.63
Plus credit (Treasury calculation)	12.50
	1,538.13
Plus advertising (Treasury calculation)	3.00
	1,541.13
Plus Federal consumption tax on batteries and charger	28.77
	1,569.86
Adjustment Canadian dollar (Treasury calculation)	4.00
Fair Value	1,565.86

In connection with the immediately proceeding calculation Mr. Gyori has confirmed that the transaction price of $2,191 reflected a deduction for the Canadian federal sales or consumption tax of twelve percent. Accordingly, it would be inappropriate to deduct the federal sales again in a calculation of fair value. Mr. Gyori also advised me by telephone that it is the policy of Marathon to sell all utility cars at the $2,490 price without discount other than to distributors. Thus, the only reduction to end users would be in the case of the Canadian federal sales tax rebate on export.

V. CONCLUSION

In closing, we urge that the Treasury Department utilize the restatement of fair value in Part IV above in liquidating assessments for 1976 importations of Melex golf cars. Further, we request that Treasury provide us with an explanation if any of the points made in Parts III or IV are not accepted.

Respectfully submitted.

CHARLES OWEN VERRILL, Jr.

Mr. VANIK. I notice in your full statement you refer to sales in Canada, and are those at a substantially higher price than those in the United States?

Mr. WEBSTER. By the Polish?

Mr. VANIK. Yes.

Mr. WEBSTER. Yes; Mr. Verrill may know that.

Mr. VERRILL. The sales in Canada that were used for purposes of determining sales as less than fair value——

Mr. VANIK. Those were distress sales, I am not talking about those sales.

Mr. VERRILL. They were substantially above the price of the imported carts, yes.

Mr. VANIK. I don't follow you. In your statement you referred to some distress sales.

Mr. WEBSTER. We were speaking of Marathon, the Canadian manufacturer——

Mr. VANIK. Oh, yes.

Mr. WEBSTER. Whose prices had been the basis for comparison.

Mr. VANIK. What is the disparity between the sales of these Polish golf carts in Canada and their price in the United States?

Mr. WEBSTER. I am not sure of the extent of the sales in Canada.

Mr. VANIK. In dollar value, what is the difference in sales price?

Mr. WEBSTER. I am not sure they sell in Canada.

Mr. VERRILL. The Polish manufacturer does not sell golf carts in Canada. Because this is a controlled economy case, the price sold in Poland or any third market are not under section 205(c) of the act considered relevant.

What Treasury looks to is the price at which a golf cart produced in a third country presumably a free world economy, and manufactured in that economy is sold either in its home market or for sale in the United States.

If there are no such situations then, you look to the price at which the same product is produced by American manufacturers and sold here.

Mr. FRENZEL. Those Polish golf carts are not sold any place except in the United States, right?

Mr. VERRILL. That is true.

Mr. FRENZEL. They don't even sell any in Poland.

Mr. WEBSTER. There are no golf courses in Poland.

Mr. FRENZEL. Except to drive tourists around. They are produced in a corner of an airplane factory on a special line.

Mr. VERRILL. True.

Mr. FRENZEL. Nobody knows what it costs. Not even the Poles.

Mr. WEBSTER. That is right, sir.

Mr. VANIK. I still don't understand. They are selling these throughout the free world, are they not?

Mr. FRENZEL. Just in the United States.

Mr. VERRILL. The Polish manufacturers?

No, no.

Mr. WEBSTER. Only in the United States. There may be a few sold elsewhere but we are not really aware of it.

Mr. VANIK. Well, you have given us a problem that I just don't want to comment on right now. We will study it. Obviously they don't want to use the American price because it is apparently too high.

Mr. WEBSTER. That is right.

Mr. VANIK. I don't know anything about golf courses, I don't know anything about them. I haven't any idea how we could challenge or dispute the process which is delaying the decision. But we will look into it.

Mr. WEBSTER. We would appreciate that. What we are really asking for is timely action and we think the time has pased for——

Mr. VANIK. Anything that worked rapidly would help your industry and provide relief.

Mr. WEBSTER. Yes, sir.

Mr. VANIK. We will try to review and determine what I guess we can come up with through staff.

Thank you, very much.

Mr. WEBSTER. Thank you.

Mr. VANIK. Your statement will be admitted into the record without objection.

The next witness is Mr. John Kennedy of Hemmendinger, Whitaker & Kennedy.

STATEMENT OF JOHN A. KENNEDY, OF THE LAW FIRM OF HEMMENDINGER, WHITAKER & KENNEDY, WASHINGTON, D.C.

Mr. KENNEDY. I am John Kennedy, Jr., I am a member of the law firm of Hemmendinger, Whitaker & Kennedy here in town.

We have been involved with antidumping cases for a number of years but the comments which are set forth in our statement are made on behalf of the firm rather than on behalf of any client.

However, Mr. Chairman, in order to make this record clear I would appreciate an opportunity at this point to submit our firm's most recent foreign agent registration statement for the record, if I may do that.

Mr. VANIK. Without objection, so ordered.

[The prepared statement and the foreign agents registration statement follow:]

STATEMENT OF HEMMENDINGER, WHITAKER & KENNEDY, ATTORNEYS, WASHINGTON, D.C.

INTRODUCTION AND SUMMARY

Testimony will be given by John A. Kennedy, Jr., a member of the firm.

The law firm of Hemmendinger, Whitaker & Kennedy has had long experience in practicing before the Treasury Department and the International Trade Commission in dumping cases. Its clientele includes various foreign and domestic firms and organizations that are involved in exporting to or importing into the United States.[1] This statement is made by the law firm on its own behalf and not upon the authorization or instruction of any of its foreign principals.

POINTS

1. The administration of the Antidumping Act is defective in that in calculating less than fair value margins each export transaction is compared with average home market prices, thus leading to less than fair value findings where there in fact is no dumping.

2. The Act itself is defective in that Section 205(b), adopted in 1974, could be applied to prevent all trade in basic products when the manufacturers are unavoidably at or near the break even point. This is contrary to international undertakings of the United States and undesirable for the United States economy.

3. The administration of the Act is defective in that all differences in circumstances of sale are not allowed as adjustments, contrary to the terms and intent of the statute.

1. *Comparison of each export transaction with average home market prices is unfair.*—The Treasury phase of a U.S. antidumping investigation normally involves a comparison of prices in sales to the United States with prices in sales in the home market, with appropriate adjustments. Section 153.16 of the regulations provides as follows:

"Where the prices of the sales which are being examined for a determination of fair value vary (after allowances provided for in §§ 153.9, 153.10, 153.11, and 153.15), determination of fair value will take into account either the prices of a preponderance of the merchandise, or the weighted averages of the merchandise thus sold. Unless there is a clear preponderance of merchandise sold at the same price, weighted averages of the prices of the merchandise sold will normally be used. If there is not a clear preponderance of the merchandise sold at the same price and weighted averages of the prices of the merchandise sold are determined by the Secretary to be inappropriate, the Secretary will use any method for determining fair value which he deems appropriate."

Under this regulation, in the course of the fair value phase of the dumping case, i.e. the Treasury Department investigation, information is given to Treasury with respect to each export sale and this price is then compared with an average home market price as calculated by Treasury from the data submitted.

If one imagines a simple model in which the sales in the home market are exactly the same as the sales for export to the United States in a given period, then it is obvious that by this test one half of the sales for export are found to be at less than fair value margins. A typical finding in such a case would be that 50 percent of the sales had less than fair value margins, the average of which was 15 percent. (The latter percentage, of course, would vary depending upon the spread and the volume of each transaction at each price point.)

Thus, it is commonplace that under the administration of the U.S. law, dumping is found where by any normal test there is no dumping, and margins are found exceeding true margins.

This practice does not flow from the language of the statute and can readily be remedied by changing the practice, which in justice must be done immediately, and amending the regulations accordingly.

We understand that after a dumping finding is made Treasury does not follow the averaging technique, but looks for a sale in the home market with which to compare each entry into the United States. This practice should be adopted to the

[1] The law firm is registered with the Department of Justice as agents of the following foreign principals, among others: The Japan Iron & Steel Exporters' Association, Japan Stainless Steel Exporters' Association, Banco Do Brasil, SA (for the Brazilian Government and the Japanese Government, acting through the United States-Japan Trade Council.

fair value phase of the investigation. Less than fair value sales should not be found if, in comparing the band of export sales with the band of home market sales, there exist a home market sale corresponding to the export sales under examination. In practices, this would be done by comparing weighted average export prices with weighted average home market prices.

2. *Section 205(b) of the Act relating to sales in the home market below cost of production is seriously defective.*—In the Trade Act of 1974 an amendment was made to the Antidumping Act of 1921 to add § 205(b) as follows:

"Whenever the Secretary has reasonable grounds to believe or suspect that sales in the home market of the country of exportation, or, as appropriate, to countries other than the United States, have been made at prices which represent less than the cost of producing the merchandise in question, he shall determine whether, in fact, such sales were made at less than the cost of producing the merchandise. If the Secretary determines that sales made at less than cost of production (1) have been made over an extended period of time and in substantial quantities, and (2) are not at prices which permit recovery of all costs within a reasonable period of time in the normal course of trade, such sales shall be disregarded in the determination of foreign market value. Whenever sales are disregarded by virtue of having been made at less than the cost of production and the remaining sales, made at not less than cost of production, are determined to be inadequate as a basis for the determination of foreign market value, the Secretary shall determine that no foreign market value exists and employ the constructed value of the merchandise in question."

The regulations (§ 153.5) track the statute but add the following sentence:

"The cost of production ordinarily will be computed on the basis of the actual costs of materials, labor and general expenses, excluding profit, or, if necessary, on the basis of the best evidence available."

The provision was drafted in the Treasury Department and was in the Trade Act of 1974 as submitted to the Congress by the Executive Branch. There is very little legislative history. The observations of the House Ways and Means Committee and the Senate Finance Committee express concern that sales below cost of production would otherwise escape the purview of the Act, without further explanation, and stress the provisions that to be operative the provision must involve sales for an extended period in substantial quantities and at prices that would not fully cover all costs within a reasonable period of time, implying that the application of the rule would be unusual.

Section 205(b) may appear to represent a reasonable defense to excessive foreign competition when world demand is slack, but in actuality it is contrary to U.S. international obligations, crude, capricious and very likely to be harmful to U.S. economic interests.

Section 205(b) was challenged in the Antidumping working party of the GATT as contrary to Article VI of the GATT which provides that the comparison shall be made with "the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country, or, in the absence of such domestic price, . . ." by third country sales or cost of production, and Article 2 of the Antidumping Code. The latter repeats the above quoted language of Article VI of the GATT, but additionally provides in Article 2(d): "When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when, because of the particular market situation, such sales do not permit a proper comparison, the margin of dumping shall be determined" by third country sales or cost of production.

It is submitted that the challenge is correct because Article VI is unambiguous; if there are domestic sales, they must be used. The Antidumping Code expression "if such sales do not permit a proper comparison" was obviously intended to cover the case of an inadequate number of sales, and thus to legitimize the practice of disregarding home market sales if too few to indicate a comparable market. That expression cannot be stretched to legitimize disregarding a large number of domestic sales made in the usual course of trade, on the ground they were below average costs. So drastic a change cannot be read into a general expression of this sort. Nor can it reasonably be argued that below-cost sales are ipso facto not in the usual course of trade.

Section 205(b) is also productive of maximum international discord by requiring an examination by U.S. officials of data of foreign producers that may be highly confidential, and not revealed even to their own governments.

The provision had its genesis in the Canadian Sulfur Case of 1972–73 in which counsel for complainant, the Duval Corporation, a Texas sulfur producer, had

claimed that sales below cost of production were ipso facto sales below fair value under the Antidumping Act. The Canadian sulfur in question was a by-product of the production of natural gas; it was claimed that it was sold at prices which did not fully cover all costs. After briefs and extensive considerations, the Treasury Department rejected the contention that sales below cost of production were ipso facto violations of the Antidumping Act. F.R. April 23, 1973. (Ironically margins were nevertheless found and that case has been caught up in the assessment of antidumping duties since the 1974 Act. A large file has accumulated on the issue of when a product is a co-product and when it is a by-product, since if it is a by-product it is not expected that its price will cover fully distributed costs.)

Based upon discussion with many people involved in the 1974 Act legislative process, we believe that little if any thought was given to the consequences of using statutory consctructed value, with its built-in minimum 10 percent general expenses and 8 percent profit. (Section 206 of the Antidumping Act, 1921, as amended, 19 U.S.C. § 169.) The drafting technique that was adopted permits an argument to be made that the provision is consistent with the International Antidumping Code. It provides that less-than-cost domestic sales and third country sales would be disregarded, leaving constructed value as the third basis for fair value. In fact, however, there is a largely unanticipated consequence, which is not only unfair to the foreign producers but potentially quite undesirable for U.S. consumers and the U.S. economy. If prices in the home market are 1 percent below production costs, export sales to the U.S. cannot be made unless there is an 8 percent profit.

In the case of economic goods like steel mill products, harm to the U.S. economy is a likely and serious consequence of the application of the new rule. Faced with decline in demand, the strong tendency of the oligopolistic U.S. industry is to reduce production and (since that increases unit costs) maintain or increase prices, at the very time that the U.S. economy faces the dilemma of combined recession and inflation. Absent price controls, the discipline of imports on price is essential, but (considering freight and duty have to be added) is completely removed.

Surprisingly, there is very little history of the application of constructed value with the built-in minimums of 10 percent administrative cost and 8 percent profit, although it has been long in the U.S. law. We believe that the first case in which constructed value was applied as a standard was in 1974, and that the only case in which a dumping finding resulted was the Birch Doorskins Case, 40 F.R. 48383, October 15, 1975. Accordingly, the economic consequences of constructed value, if it should be widely applied, have never been tested.

Constructed value will not always be applied, because there are often enough sales above cost in the home market to be a basis of comparison. This has been cited as mitigating the otherwise extreme effects of Section 105(b), but in fact it means that a new element of unfairness is becoming a routine aspect of administration of the Antidumping Act.

The normal practice in dumping cases is to compare average prices in the home market with each sale for export to the United States. Section 205(b) requires the Treasury Department to disregard certain prices that are below cost in arriving at the average price. The result is to create margins that would not otherwise exist or to enlarge margins, without the slightest justification in principle.

This unfairness is compounded by the fact that each export transaction is compared with average prices in the home market, as explained in point 1 above. Export transactions at prices above the domestic standard are disregarded, so that a double bias is introduced by Section 205(b). A group of sales below average for export to the United States is compared with a group of sales above average in the home market.

The unfairness could be mitigated somewhat by procedures which are believed to be within Treasury's discretion in interpreting the law. It could find the home market price for a particular article in the usual way, using average or predominant price, and then apply Section 205(b) only if that price is below cost of production; and exclude only those sales that bring the average below cost.

The effects of Section 205(b) can also be mitigated by a high threshold test. As a matter of statutory construction, the words "reasonable grounds to believe or suspect" in 205(b) should be construed in pari passu with the expression "reason to believe or suspect" used in Section 201(b) of the Act, relating to the preliminary determination which is made after six months of investigation. That

finding is made upon a substantial evidentiary record. The Congress was well aware of that in enacting 205(b). There is a strong argument, therefore, that a similarly strong evidentiary record should be before the Secretary of the Treasury before he investigates cost of production. The practice of the Treasury Department has been to investigate cost of production upon fairly thin allegations in the complaint, and to decide at the beginning of the investigation whether or not to do so. It is believed that decision at this point is not necessary. The Secretary has authority to extend investigations to nine months, and that could be the normal course if cost of production is investigated. Only after a strong showing by complainants which has been thoroughly reviewed in Treasury or after the initial stages of the investigation have disclosed good reasons, should there be an investigation of cost of production. It would also be desirable that the Treasury Department make the charges public and invite comments from interested parties before such a decision.

It is clear that Section 205(b) represents overkill that should be eliminated from the U.S. law. If there is a principle relating to export sales below average costs that belongs in the Antidumping Law, it should first be internationally agreed.

It is also evident that the long standing 8 percent profit in the definition of constructed value should be made more flexible, lest it lead to excessively anticompetitive consequences.

3. *Differences in circumstances of sale.*—The law provides in Section 202(b) and (c) that if it is established to the satisfaction of the Secretary that the difference between the home market prices and the export price is "wholly or partly due to . . . differences in circumstances of sale . . . then due allowance should be made therefor."

The regulations, Section 153.10, put an unjustified limitation on the unambiguous words by providing that "differences in circumstances of sale for which such allowances will be made are limited, in general, to those circumstances which bear a direct relationship to the sales which are under consideration."

This small difference in language results in rejection of selling and distribution costs that are clearly different and can readily be calculated under accepted accounting principles. It leads to findings of dumping where there is no dumping, and to larger margins than truly exist. Treasury has been officially considering change under one regime after another, but nothing is done.

For a fuller discussion of this issue, reference is made to the testimony given by Mr. Hemmendinger of this law firm before the Ways and Means Committee when it was considering the Trade Act of 1974. Hearings before the Ways and Means Committee on H.R. 6767, 93rd Congress, 1st Session, page 1357 (May, 1973).

UNITED STATES DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20530

SUPPLEMENTAL STATEMENT

Pursuant to Section 2 of the Foreign Agents Registration Act of 1938, as Amended

For Six Month Period Ending JUN 3 0 1977
(Insert date)

Name of Registrant — Registration No. 1001
STITT, HEMMENDINGER & KENNEDY

Business Address of Registrant
1000 Connecticut Avenue, N. W.
Washington, D. C. 20036

I - REGISTRANT

1. Has there been a change in the information previously furnished in connection with the following:

(a) If an individual:

(1) Residence address	Yes ☐	No ☐
(2) Citizenship	Yes ☐	No ☐
(3) Occupation	Yes ☐	No ☐

(b) If an organization:

(1) Name	Yes ☐	No ☒ *
(2) Ownership or control	Yes ☐	No ☒
(3) Branch offices	Yes ☐	No ☒

2. Explain fully all changes, if any, indicated in Item 1.

*Effective July 1, 1977, Registrant merged with the Cleveland, Ohio law firm of Arter & Hadden and the Columbus, Ohio law firm of Knepper, White, Arter & Hadden. The Registrant's name will be changed to Hemmendinger, Whitaker & Kennedy.

IF THE REGISTRANT IS AN INDIVIDUAL, OMIT RESPONSE TO ITEMS 3, 4, and 5.

3. Have any persons ceased acting as partners, officers, directors or similar officials of the registrant during this 6 month reporting period? Yes ☐ No ☒

If yes, furnish the following information:

Name	*Position*	*Date Connection Ended*

4. Have any persons become partners, officers, directors or similar officials during this 6 month reporting period? ☐ Yes No ☒

If yes, furnish the following information:

Name	*Residence Address*	*Citizenship*	*Position*	*Date Assumed*

5. Has any person named in Item 4 rendered services directly in furtherance of the interests of any foreign principal? Yes ☐ No ☒

If yes, identify each such person and describe his services.

6. Have any employees or individuals other than officials, who have filed a short form registration statement, terminated their employment or connection with the registrant during this 6 month reporting period?
Yes ☐ No ☒

If yes, furnish the following information:

Name	*Position or connection*	*Date terminated*

7. During this 6 month reporting period, have any persons been hired as employees or in any other capacity by the registrant who rendered services to the registrant directly in furtherance of the interests of any foreign principal in other than a clerical or secretarial, or in a related or similar capacity?
Yes ☐ No ☒

If yes, furnish the following information:

Name	*Residence Address*	*Position or connection*	*Date connection began*

II - FOREIGN PRINCIPAL

8. Has your connection with any foreign principal ended during this 6 month reporting period?
Yes ☐ No ☒

If yes, furnish the following information:

Name of foreign principal — *Date of Termination*

9. Have you acquired any new foreign principal[1] during this 6 month reporting period? Yes ☐ No ☐

If yes, furnish following information:

Name and address of foreign principal — *Date acquired*

10. In addition to those named in Items 8 and 9, if any, list the foreign principals[1] whom you continued to represent during the 6 month reporting period.

-Japan Iron & Steel Exporters' Association
-Japan Galvanized Iron Exporters' Association
-Japan Wire Products Exporters' Association
-Japan Stainless Steel Exporters' Association
-Japanese Government, acting through the United States-Japan Trade Council
-Banco do Brasil, S.A. (for Brazi Governm
-Japan Woolen & Linen Textiles Exporters' Association

III - ACTIVITIES

11. During this 6 month reporting period, have you engaged in any activities for or rendered any services to any foreign principal named in Items 8, 9, and 10 of this statement? Yes ☒ No ☐

If yes, identify each such foreign principal and describe in full detail your activities and services:

See Attachment for each foreign principal named

[1] The term "foreign principal" includes, in addition to those defined in section 1(b) of the Act, an individual or organization any of whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign government, foreign political party, foreign organization or foreign individual. (See Rule 100(a)(9)).

A registrant who represents more than one foreign principal is required to list in the statements he files under the Act only those foreign principals for whom he is not entitled to claim exemption under Section 3 of the Act. (See Rule 208.)

12. During this 6 month reporting period, have you on behalf of any foreign principal engaged in political activity[2] as defined below?

Yes ☑ No ☐

If yes, identify each such foreign principal and describe in full detail all such political activity, indicating, among other things, the relations, interests and policies sought to be influenced and the means employed to achieve this purpose. If the registrant arranged, sponsored or delivered speeches, lectures or radio and TV broadcasts, give details as to dates, places of delivery, names of speakers and subject matter.

SEE ATTACHMENT FOR EACH FOREIGN PRINCIPAL NAMED UNDER ITEM NO 10

13. In addition to the above described activities, if any, have you engaged in activity on your own behalf which benefits any or all of your foreign principals?

Yes ☐ No ☒

If yes, describe fully.

[2] The term "political activities" means the dissemination of political propaganda and any other activity which the person engaging therein believes will, or which he intends to, prevail upon, indoctrinate, convert, induce, persuade, or in any other way influence any agency or official of the Government of the United States or any section of the public within the United States with reference to formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party.

IV - FINANCIAL INFORMATION

14. (a) RECEIPTS - MONIES

During this 6 month reporting period, have you received from any foreign principal named in Items 8, 9 and 10 of this statement, or from any other source, for or in the interests of any such foreign principal, any contributions, income or money either as compensation or otherwise?
Yes ☒ No ☐

If yes, set forth below in the required detail and separately for each foreign principal an account of such monies.[3]

Date	*From Whom*	*Purpose*	*Amount*
See attachment for each foreign principal named under Item No. 10			

Total

14. (b) RECEIPTS - THINGS OF VALUE

During this 6 month reporting period, have you received any thing of value[4] other than money from any foreign principal named in Items 8, 9 and 10 of this statement, or from any other source, for or in the interests of any such foreign principal?
Yes ☐ No ☒

If yes, furnish the following information:

Name of foreign principal	*Date received*	*Description of thing of value*	*Purpose*

[3] A registrant is required to file an Exhibit D if he collects or receives contributions, loans, money, or other things of value for a foreign principal, as part of a fund raising campaign. See Rule 201(e).

[4] Things of value include but are not limited to gifts, interest free loans, expense free travel, favored stock purchases, exclusive rights, favored treatment over competitors, "kickbacks," and the like.

15. (a) DISBURSEMENTS - MONIES

During this 6 month reporting period, have you

(1) disbursed or expended monies in connection with activity on behalf of any foreign principal named in Items 8, 9 and 10 of this statement? Yes ☒ No ☐

(2) transmitted monies to any such foreign principal? Yes ☐ No ☒

If yes, set forth below in the required detail and separately for each foreign principal an account of such monies, including monies transmitted, if any, to each foreign principal.

Date	To *Whom*	*Purpose*	*Amount*

See attachment for each foreign principal named under Item No. 10

15. (b) DISBURSEMENTS - THINGS OF VALUE

During this 6 month reporting period, have you disposed of anything of value[5] other than money in furtherance of or in connection with activities on behalf of any foreign principal named in items 8, 9 and 10 of this statement?

Yes ☐ No ☒

If yes, furnish the following information:

Date disposed	*Name of person to whom given*	*On behalf of what foreign principal*	*Description of thing of value*	*Purpose*

(c) DISBURSEMENTS - POLITICAL CONTRIBUTIONS

During this 6 month reporting period, have you from your own funds and on your own behalf either directly or through any other person, made any contributions of money or other things of value[5] in connection with an election to any political office, or in connection with any primary election, convention, or caucus held to select candidates for political office? Yes ☐ No ☒ ←

If yes, furnish the following information:

Date	*Amount or thing of value*	*Name of political organization*	*Name of candidate*

V - POLITICAL PROPAGANDA

(Section 1(j) of the Act defines "political propaganda" as including any oral, visual, graphic, written, pictorial, or other communication or expression by any person (1) which is reasonably adapted to, or which the person disseminating the same believes will, or which he intends to, prevail upon, indoctrinate, convert induce, or in any other way influence a recipient or any section of the public within the United States with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party or with reference to the foreign policies of the United States or promote in the United States racial, religious, or social dissensions, or (2) which advocates, advises, instigates, or promotes any racial, social, political, or religious disorder, civil riot, or other conflict involving the use of force or violence in any other American republic or the overthrow of any government or political subdivision of any other American republic by any means involving the use of force or violence.)

16. During this 6 month reporting period, did you prepare, disseminate or cause to be disseminated any political propaganda as defined above? Yes ☐ X No ☒ 7.

IF YES, RESPOND TO THE REMAINING ITEMS IN THIS SECTION V.

17. Identify each such foreign principal.

[5] Things of value include but are not limited to gifts, interest free loans, expense free travel, favored stock purchases, exclusive rights, favored treatment over competitors, "kickbacks," and the like.

18. During this 6 month reporting period, has any foreign principal established a budget or allocated a specified sum of money to finance your activities in preparing or disseminating political propaganda?
Yes ☐ No ☒

If yes, identify each such foreign principal, specify amount, and indicate for what period of time.

19. During this 6 month reporting period, did your activities in preparing, disseminating or causing the dissemination of political propaganda include the use of any of the following:
☐ Radio or TV broadcasts ☐ Magazine or newspaper articles ☐ Motion picture films ☐ Letters or telegrams
☐ Advertising campaigns ☐ Press releases ☐ Pamphlets or other publications ☐ Lectures or speeches
☐ Other *(specify)* _____ N/A

20. During this 6 month reporting period, did you disseminate or cause to be disseminated political propaganda among any of the following groups:
☐ Public Officials ☐ Newspapers ☐ Libraries
☐ Legislators ☐ Editors ☐ Educational institutions
☐ Government agencies ☐ Civic groups or associations ☐ Nationality groups
☐ Other *(Specify)* _____ N/A

21. What language was used in this political propaganda:
☐ English ☐ Other *(specify)* _____ N/A

22. Did you file with the Registration Section, Department of Justice, two copies of each item of political propaganda material disseminated or caused to be disseminated during this 6 month reporting period?
Yes ☐ No ☐ N/A

23. Did you label each item of such political propaganda material with the statement required by Section 4(b) of the Act? Yes ☐ No ☐ N/A

24. Did you file with the Registration Section, Department of Justice, a Dissemination Report for each item of such political propaganda material as required by Rule 401 under the Act?
Yes ☐ No ☐ N/A

VI - EXHIBITS AND ATTACHMENTS

25. EXHIBITS A AND B

(a) Have you filed for each of the newly acquired foreign principals in Item 9 the following:
Exhibit A[6] Yes ☐ No ☐
Exhibit B[7] Yes ☐ No ☐
If no, please attach the required exhibit. N/A

(a) Have there been any changes in the Exhibits A and B previously filed for any foreign principal whom you represented during this six month period?
Yes ☐ No ☐
If yes, have you filed an amendment to these exhibits? Yes ☐ No ☒
If no, please attach the required amendment.

[6] The Exhibit A, which is filed on Form OBD-67 (Formerly DJ-306) sets forth the information required to be disclosed concerning each foreign principal.
[7] The Exhibit B, which is filed on Form OBD-65 (Formerly DJ-304) sets forth the information concerning the agreement or understanding between the registrant and the foreign principal.

26. EXHIBIT C

If you have previously filed an Exhibit C[8], state whether any changes therein have occurred during this 6-month reporting period.
Yes ☐ No ☐

If yes, have you filed an amendment to the Exhibit C? Yes ☐ No ☐

If no, please attach the required amendment.

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27. SHORT FORM REGISTRATION STATEMENT

Have short form registration statements been filed by all of the persons named in Items 5 and 7 of the supplemental statement?
Yes ☒ No ☐

If no, list names of persons who have not filed the required statement.

The undersigned swear(s) or affirm(s) that he has (they have) read the information set forth in this registration statement and the attached exhibits and that he is (they are) familiar with the contents thereof and that such contents are in their entirety true and accurate to the best of his (their) knowledge and belief, except that the undersigned make(s) no representation as to the truth or accuracy of the information contained in attached Short Form Registration Statement, if any, insofar as such information is not within his (their) his (their) personal knowledge.

(Type or print name under each signature)

(Both copies of this statement shall be signed and sworn to before a notary public or other person authorized to administer oaths by the agent, if the registrant is an individual, or by a majority of those partners, officers, directors or persons performing similar functions who are in the United States, if the registrant is an organization.)

R. Christian Duerr

Subscribed and sworn to before me at _____

this _____ day of _____, 19 _____

_____
(Signature of notary or other officer)

---

[8] The Exhibit C, for which no printed form is provided, consists of a true copy of the charter, articles of incorporation, association, constitution, and bylaws of a registrant that is an organization. (A waiver of the requirement to file an Exhibit C may be obtained for good cause shown upon written application to the Assistant Attorney General, Criminal Division, Internal Security Section, Department of Justice, Washington, D.C. 20530.

REGISTRANT: Stitt, Hemmendinger & Kennedy
1000 Connecticut Avenue, N. W.
Washington, D. C. 20036

ATTACHMENT TO SUPPLEMENTAL REGISTRATION STATEMENT
for Period Ending June 30, 1977

FOREIGN PRINCIPAL: Japanese Government, acting through the United States-Japan Trade Council

Question 11. During this 6 month reporting period, have you engaged in any activities for or rendered any services to any foreign principal named in Items 8, 9, and 10 of this statement?

1. Members and associates of the law firm drafted in whole or in part reports distributed to its subscribers by the U. S. -Japan Trade Council as follows:

No. 1 -- International Trade Commission Actions Concerning Television Receivers from Japan
No. 4 A -- Official Actions Affecting International Trade: November 19 - December 30, 1976
No. 10 -- The Carter Administration and Trade Policy: A Nettle in Hand
No. 11 A -- Official Actions Affecting International Trade: December 15, 1976 - February 2, 1977
No. 19 -- Carter Administration Trade Policy Begins to Emerge; Customs Court Decision Potentially Damaging
No. 19 A -- Official Actions Affecting International Trade: February 3, 1977 - March 31, 1977
No. 28 A-- Official Actions Affecting International Trade: April 1, 1977 - June 1, 1977
No. 30 -- No Confrontation on Steel

2. During the period members and associates of the law firm contributed five items to five reports in a series entitled "U. S. - Japan Trade Roundup", describing activities in Congress and in Executive agencies affecting U. S. -Japan Trade.

3. Members and associates of the law firm prepared memoranda to the Japanese Government relating to the position of members of the Carter Administration with respect to growing protectionism in the United States.

4. During the period Noel Hemmendinger had conferences on U. S. - Japan trade and economic relations with:

Lester Edmunds -- Deputy Assistant Secretary of State
William Kelly -- Office of the Special Representative for Trade Negotiations
William Geimer -- Deputy Assistant Secretary of State
Alan Wolff -- Office of the Special Representative for Trade Negotiations

Question 12. During this 6 month reporting period, have you on behalf of any foreign principal engaged in political activity as defined below?

As reported in answer to Question 11.

Question 14. (a) RECEIPTS-MONIES
During this 6 month reporting period, have you received from any foreign principal named in Items 8, 9 and 10 of this statement, or from any other source, for or in the interests of any such foreign principal, any contributions, income or money either as compensation or otherwise?

Date	From Whom	Purpose	Total Amount
2/77	U.S.-Japan Trade Council	Retainer	$3,100.00
3/77	U.S.-Japan Trade Council	Retainer	679.50
6/77	U.S.-Japan Trade Council	Retainer	3,100.00
		TOTAL:	$6,879.50

Question 15. (a) (1) DISBURSEMENTS-MONIES
During this 6 month reporting period, have you (1) disbursed or expended monies in connection with activity on behalf of any foreign principal named in Items 8, 9 and 10 of this statement?

Stationery; office supplies; telephone; cables; telex; transportation; photo-copying; postage and other overhead expenses: $ 573.75

REGISTRANT: Stitt, Hemmendinger & Kennedy
1000 Connecticut Avenue, N. W.
Washington, D. C. 20036

ATTACHMENT TO SUPPLEMENTAL REGISTRATION STATEMENT
for Period Ending June 30, 1977

FOREIGN PRINCIPAL: Japan Iron & Steel Exporters' Association
Japan Galvanized Iron Exporters' Association
Japan Wire Products Exporters' Association

Question 11. During this 6 month reporting period, have you engaged in any activities for or rendered any services to any foreign principal named in Items 8, 9, and 10 of this statement?

During the period Noel Hemmendinger conferred on principles of the trade in steel, with particular reference to the protectionism and efforts of the U. S. industry and the possibility of dumping cases with:

Harry Lamar	-- Staff of the House Ways and Means Committee
William Barraclough	-- U. S. Department of State
Fred Bergsten	-- Assistant Secretary of the U. S. Department of the Treasury
Peter Suchman	-- Deputy Assistant Secretary of the U. S. Department of the Treasury
Alan Wolff	-- Office of the Special Representative for Trade Negotiations
Forest Abbuhl	-- U. S. Department of Commerce
John Ray	-- U. S. Department of the Treasury

In addition Mr. Hemmendinger conferred with Chairman Minchew of the International Trade Commission and Commissioner Moore of the Commission with respect to a proposed investigation by the Commission with respect to steel trade in the Western portion of the U. S. under Section 332, and with other staff members of the International Trade Commission in the same connection.

On February 4, 1977, Noel Hemmendinger and John A. Kennedy, Jr. met with Richard Heimlich and Alan Wolff to discuss steel problems.

On February 11, 1977, John A. Kennedy, Jr. met with Russell Shewmaker, General Counsel, ITC, with respect to ITC procedures.

On February 21, 1977, Mr. Kennedy participated in a meeting with the Emergency Committee on American Trade with members of the American Importers Association, United States-Japan Trade Council, and a representative from Congressman Sam Gibbons' office. The meeting was held for the purpose of discussing the Buy American Provision of H. R. 11.

On February 15, 1977 and March 30, 1977, Mr. Kennedy met with Bradford Miller, from Department of State, to discuss matter concerning steel trade.

On June 17, 1977, Noel Hemmendinger and John A. Kennedy, Jr. met with Julius Katz to discuss matters concerning steel trade.

On June 20, 1977, Noel Hemmendinger and John A. Kennedy, Jr. met with Alan Wolff, (STR), and Richard Heimlich to discuss matters concerning steel trade.

During the period January 1-June 30, 1977, Mr. John A. Kennedy, Jr. has had discussions with Mr. Ed ~~Kerner~~ Bowers of Iron Age Magazine and Mr. Richard Lawrence of Journal of Commerce.

Question 12. During this 6 month reporting period, have you on behalf of any foreign principal engaged in political activity as defined below?

As reported in answer to Question 11.

Question 14. (a) RECEIPTS-MONIES
During this 6 month reporting period, have you received from any foreign principal named in Items 8, 9 and 10 of this statement, or from any other source, for or in the interests of any such foreign principal any contributions, income or money either as compensation or otherwise?

Date	From Whom	Purpose	Total Amount
2/77	Japan Iron & Steel Exporters' Assn.	Retainer	$16,500.00
2/77	Japan Iron & Steel Exporters' Assn.	Expense	4,746.73
6/77	Japan Iron & Steel Exporters' Assn.	Fee	7,083.34
6/77	Japan Iron & Steel Exporters' Assn.	Expense	3,200.43
		TOTAL:	$31,530.50

Question 15. (a) (1) DISBURSEMENTS-MONIES
During this 6 month reporting period, have you (1) disbursed or expended monies in connection with activity on behalf of any foreign principal named in Items 8, 9 and 10 of this statement?

Stationery; office supplies; telephone; cables; telex; transportation; photo-copying; postage and other overhead expenses: $ 8,144.85

REGISTRANT: Stitt, Hemmendinger & Kennedy
1000 Connecticut Avenue, N.W.
Washington, D. C. 20036

ATTACHMENT TO SUPPLEMENTAL REGISTRATION STATEMENT
for Period Ending June 30, 1977

FOREIGN PRINCIPAL: Banco do Brasil, S.A. for the Brazilian Government

Question 11. During this 6 month reporting period, have you engaged in any activities for or rendered any services to any foreign principal named in Items 8, 9, and 10 of this statement?

1. Members and associates of the law firm advised the Brazilian Government, chiefly by telexes to Brasilia, copies of which were furnished to the Embassy of Brazil in Washington, with respect to changes in personnel and new policy in the trade field within the U.S. Government. The law firm also rendered advice and made representation to U.S. Government agencies in respect to proceedings which fall within the exemption of §3(g) of the Act.

On Monday, May 23, 1977, Chris Berg met with Ambassador Robert Strauss, the President's Special Trade Representative, Mr. Steven Lande, Assistant and Mr. Thomas Graham, Assistant General Counsel on behalf of the footwear group, American Importers Association, to discuss restrictions on footwear imported from the Republics of Korea and China. This meeting is reported only because information obtained in the meeting was conveyed to the Brazilian Ministry of Finance. No representation on behalf of foreign principals were made or were necessary since the footwear restrictions were not effective with respect to any foreign client.

Question 12. During this 6 month reporting period, have you on behalf of any foreign principal engaged in political activity as defined below?

During the period Noel Hemmendinger conferred on questions of trade policy affecting the Brazilian Government with:

Alan Wolff	-- Office of the Special Representati for Trade Negotiations
Gordon Colney	-- U.S. Chamber of Commerce
William Barreda	-- U.S. Department of the Treasury
William Barraclough	-- U.S. Department of State
Harry Lamar	-- Staff of the House Ways and Means Committee
Peter Suchman	-- Deputy Assistant Secretary of the U.S. Department of the Treasury

Question 14. (a) RECEIPTS-MONIES
During this 6 month reporting period, have you received from any foreign principal named in Items 8, 9 and 10 of this statement, or from any other source, for or in the interests of any such foreign principal, any contributions, income or money either as compensation or otherwise?

Date	From Whom	Purpose	Total Amount
2/77	Banco do Brasil	Retainer	$10,000.00
3/77	Banco do Brasil	Retainer	9,600.00
3/77	Banco do Brasil	Expenses	1,161.83
6/77	Banco do Brazil	Retainer	4,800.00
		TOTAL:	$25,561.83

Question 15. (a) (1) DISBURSEMENTS-MONIES
During this 6 month reporting period, have you (1) disbursed or expended monies in connection with activities on behalf of any foreign principal named in Items 8, 9 and 10 of this statement?

Stationery; office supplies; telephone; cables; telex; transportation; photo-copying; postage and other overhead expenses: $ 2,606.52

REGISTRANT: Stitt, Hemmendinger & Kennedy
1000 Connecticut Avenue, N. W.
Washington, D. C. 20036

ATTACHMENT TO SUPPLEMENTAL REGISTRATION STATEMENT
for Period Ending June 30, 1977

FOREIGN PRINCIPAL: Japan Stainless Steel Exporters' Association,
Tokyo, Japan

Question 11. During this 6 month reporting period, have you engaged in any activities for or rendered any services to any foreign principal named in Items 8, 9, and 10 of this statement?

Reports and telexes to the Japanese Iron & Steel Exporters' Association with respect to economic developments, markets and developments in the United States Government were passed also to the Japanese Stainless Steel Exporters' Association.

Actions uniquely in the interest of the Japanese Stainless Steel Exporters' Association were related to the representation of specific clients in respect of specific proceedings under United States law.

Question 12. During this 6 month reporting period, have you on behalf of any foreign principal engaged in political activity as defined below?

No.

Question 14. (a) RECEIPTS-MONIES
During this 6 month reporting period, have you received from any foreign principal named in Items 8, 9 and 10 of this statement, or from any other source, for or in the interests of any such foreign principal any contributions, income or money either as compensation or otherwise?

No.

Question 15. (a)(1) DISBURSEMENTS-MONIES
During this 6 month reporting period, have you (1) disbursed or expended monies in connection with activity on behalf of any foreign principal named in Items 8, 9 and 10 of this statement?

Stationery; office supplies; telephone; cables; telex; transportation; photo-copying; postage and other overhead expenses: $ 187.82

REGISTRANT: Stitt, Hemmendinger & Kennedy
1000 Connecticut Avenue, N. W.
Washington, D. C. 20036

ATTACHMENT TO SUPPLEMENTAL REGISTRATION STATEMENT
for Period Ending June 30, 1977

FOREIGN PRINCIPAL: Japan Woolen and Linen Textiles Exporters' Association

Question 11. During this 6 month reporting period have you engaged in any activities for or rendered any services to any foreign principal named in Items 8, 9, and 10 of this statement?

No.

Question 12. During this 6 month reporting period, have you on behalf of any foreign principal engaged in political activity as defined below?

No.

Question 14. (a) RECEIPTS-MONIES
During this 6 month reporting period, have you received from any foreign principal named in Items 8, 9 and 10 of this statement, or from any other source, for or in the interests of any such foreign principal any contributions, income or money either as compensation or otherwise?

Date	From Whom	Purpose	Total Amount
6/76	Japan Woolen & Linen Textiles Exporters' Assn.	Retainer	$2,000.00
6/76	Japan Woolen & Linen Textiles Exporters' Assn.	Expense	16.53
			$2,016.53

Question 15. (a) (1) DISBURSEMENTS-MONIES
During this 6 month reporting period, have you (1) disbursed or expended monies in connection with activity on behalf of any foreign principal named in Items 8, 9 and 10 of this statement?

No.

Mr. KENNEDY. I know that we have little time so I would like to summarize very briefly the points to be made in the statement within the 3 minutes alloted.

First of all, we submit that the administration of the Antidumping Act is defective in that the fair value margins are calculated on the basis of an average home-market price compared to a transaction to transaction export price.

This is not the way the dumping duties themselves imposed are calculated.

Second, we submit that section 205(b), the cost of production provision, is seriously deficient in that it results in dumping margins, when used, which makes it all but impractical to conduct any trade in the product in question.

Finally, we submit that the Treasury Department does not grant circumstances of sales adjustments in making the Antidumping Act calculations which are called for by the statute and by the regulations.

Thank you, very much, Mr. Chairman.

Mr. VANIK. Well, on your first point, you allege comparison of each export transaction of average home-market prices is unfair.

Mr. KENNEDY. I wouldn't say unfair but——

Mr. VANIK. But that is your first sentence on page 3. "Comparison of each export transaction with average home market prices is unfair."

Mr. KENNEDY. Well, Mr.Chairman, we believe it would be a more reasonable calculation if there were a transaction-by-transaction comparison rather than taking a weighted average value over a 6-month period.

For the United States Steel case, probably a 12-month period.

Mr. VANIK. If we were to use actual price comparisons in the less than fair value investigation, wouldn't that greatly prolong the period needed in making a finding?

That is what everybody has been complaining about.

Mr. KENNEDY. Well, I don't think it would, sir. I cannot speak in terms of the administrative burden upon the customs service, or the Treasury Department, but I think that a transaction by transaction of tariffs would not in fact require a greater expenditure of time or personnel energy than the weighted value.

Mr. VANIK. Well, I think——

Mr. KENNEDY. I understand that reasonable men can differ, Your Honor, but I cannot say that——

Mr. VANIK. We use average home-market prices only for the purpose of determining the face amount of bonds given while appraisement is withheld; actual home-market prices are used in actual assessment of dumping duties.

Mr. KENNEDY. Yes, actual home-market prices are used in assessment of duties.

Mr. VANIK. You don't have any argument with that, do you?

Mr. KENNEDY. No, no, oh, no. Far from it. That is to say after the master list is compiled there is a transaction-by-transaction comparison, as I understand it, trying to match up the date of exportation to the appropriate home-market price.

Mr. VANIK. In point three you complain about the price adjustments not permitted by statute. I would like to ask you what price adjustments are not permitted by the statute?

Mr. KENNEDY. Oh, the statute is silent, I think, as to any specific price adjustments. I think it is a question of what interpretation is put upon the term "circumstance of sale."

Mr. VANIK. You say this, "The administration of the act is defective in that all differences in circumstances of sale are not allowed as adjustments, contrary to the terms of the statute."

So, specifically responding to my question, what price adjustments are not permitted by the statute?

Mr. KENNEDY. Well, sir, I think there are certain advertising costs which could be allowed, there are sales expenses. Matters of this kind really to be decided on a case-by-case basis.

I think the key term is "directly related."

I don't believe the statute uses that.

Mr. VANIK. You decide everything on a case-by-case basis; it is awfully good for the lawyers. I felt that one of the problems about our whole system of jurisprudence, and I have been a judge, is that we are deciding cases over and over and over again on the same set of facts and arriving at varied decisions.

One of the things you worry about is getting some uniformity. Somehow or another, the same case shouldn't have to be tried so many, many times after a certain point. It ought to computerize facts and then clock out the same uniform determination so that we don't have all the varied kinds of determinations going around and creating a lot of confusion and add to the complexities of our business.

One of the things I was hoping for is that we would evolve a procedure that would be quick and simple rather than being increasingly complex, which you seem to urge: perpetuation of the complexity of our procedures.

Mr. KENNEDY. Under the Antidumping Act, sir?

Mr. VANIK. Yes; that is what we are talking about.

Mr. KENNEDY. I think I would very much agree that it would be nice to simplify procedures. It would be very handy to be able to move quickly in this area but as the statute now is enforced conscientiously, we have in fact 6 to 9 months procedure and a great many complexities.

If the phrase, "circumstances of sale" as used in the statute should be enforced as I believe the Congress intended it to be, it seems that the term "directly" in the regulations is inappropriate. There are many circumstances of sale. This is an existing complexity in the statute and in the regulations.

I am suggesting that it is appropriate to recognize this complexity and to allow for the full series of adjustments which it appears that Congress has provided for in the statute.

Mr. VANIK. Mr. Frenzel?

Mr. FRENZEL. Thank you, Mr. Chairman. No questions.

Mr. VANIK. Well, I want to thank you very much for your testimony, Mr. Kennedy. I am going to study it and peruse it more thoroughly for its full detail.

Mr. KENNEDY. I hope we have an opportunity to submit further comments, sir, as a result of other comments made earlier today.

Mr. VANIK. Well, yes, you will have the privilege to supplement your statement. I think the closing date is the 21st of November. You have until the 21st of November to submit supplemental statements and we will be very happy to have that statement.

We want to be objective about what we do. Our whole purpose in this whole proceeding is to try to make the law work better, more effectively with more equity.

Mr. KENNEDY. And I think that purpose is very much appreciated, sir.

Mr. VANIK. Do you think much needs to be changed from the 1921 Act?

Mr. KENNEDY. Well, 205(b).

Mr. VANIK. 205(b), all right.

Thank you, very much. I am not concurring in that, I am just merely acknowledging your statement on it.

Thank you, very much, Mr. Kennedy.

Mr. KENNEDY. Thank you, sir.

Mr. VANIK. Is there any further business before the committee. did anyone else have anything they wanted to say for the good of the order even though you are not scheduled?

Apparently not, so there being no further questions before the committee, this meeting of the committee will be adjourned until the call of the Chair.

[Whereupon, at 3:17 p.m., the hearing was adjourned.]

[The following were submitted for the record:]

AMERICAN CHAIN ASSOCIATION,
Englewood, Fla., November 18, 1977.

HON. CHARLES A. VANIK,
Chairman, Subcommittee on Trade, Ways and Means Committee, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to the Subcommittee's press release of October 31, inviting written comments on the administration of the Antidumping Act of 1921, as amended.

As chairman of the American Chain Association's International Trade Committee, I am pleased to have this opportunity to describe to the Subcommittee our experiences with the antidumping laws.

The American roller chain industry is familiar—all too familiar—with the unfair dumping practices of foreign manufacturers. In 1973, after lengthy legal proceedings, the Treasury Department found that Japanese producers were dumping roller chain in the United States. However, we in the U.S. industry do not feel that our success in the dumping case has been effective in stopping unfair practices by Japanese producers.

1. A major problem is the long delay between entry of Japanese roller chain into the U.S. market place and the ultimate assessment of dumping duties. Since 1973 our Association has periodically contacted the Customs Service to keep abreast of the assessment situation. However, as late as September of this year we were told that assessments were generally only up to the third quarter of 1975—two full years behind.

These delays simply encourage foreign manufacturers to continue their unfair practices. With the payment of a small bonding fee, a foreign manufacturer—one found guilty of dumping—can postpone for years any concern about payment of dumping duties.

2. A second concern is that dumping duties on roller chain imports from Japan, once assessed, have been minimal. Thus we have been informed that only approximately $364,000 in duties had been assessed in the entire period from 1971, when the dumping complaint was filed, through the third quarter of 1975. Based on the dumping margins found in 1973, current levels of imports from Japan and extraordinarily low current U.S. selling prices, very serious questions are raised in our minds as to the accuracy of Customs' assessments.

We know that markets change and that, at least in theory, Japanese roller chain producers may not still be dumping. But the Customs Service has kept us essentially in the dark about the current situation. The Chain Association has asked for information about assessments and the compilation of master lists on which they are based. In fairness, we recognize that Customs has some confi-

dential business information, but even our requests for nonconfidential summaries of the data used in preparation of master lists have not been honored.

Since dumping assessments are a complicated area full of opportunities for evasion and mistakes, we think that an American industry should be given at least a chance to comment about the adjustments and calculations made. Of course, we cannot comment—or provide information potentially helpful to the Customs Service in enforcing the dumping finding—without some disclosure on the part of Customs.

It is truly a frustrating experience for an American industry to succeed in establishing unfair dumping and then to find little benefit in the market place—while not know what the Government is doing about the dumping situation.

3. A third matter of concern to the American roller chain industry is the length of time and the truly burdensome effort needed to persuade the Treasury Department to open a dumping investigation. This summer members of our Association obtained reports from reliable sources that Japanese roller chain manufacturers were selling their products at below their cost of production in the Japanese home market.

The President of the Association wrote to the Acting Commissioner of Customs to request that Customs investigate these reports. However, Customs declined to investigate the matter, saying that we must collect "quite detailed allegations" about the sales below cost.

In these circumstances—where our Association has already carried the heavy burden of a successful dumping case—we think that the Government should investigate our reports. Since these producers have already been found guilty of unfair dumping once, responsible enforcement of the current laws calls for particular vigilance in this case. However, to persuade Treasury to investigate new dumping practices, we are being required to develop information on the cost of producing roller chain in Japan. That closely guarded information is almost impossible to find.

Indeed, even if we can determine the Japanese production costs, we may be forced to repeat the task of collecting Japanese home market sales prices to show that prices are below costs. That price data, however, should have already been collected by the Customs Service and, as mentioned above, should be supplied to us in some nonconfidential form. These simple reforms of requiring prompt assessments and providing nonconfidential data to the U.S. industry would eliminate at least a part of the burden.

In closing, I should observe that the Customs officials working in this have been individually cooperative. As we see the problem, there is just too much work for too few men. Congress could help to relieve some of the bottlenecks by providing additional manpower.

Respectfully submitted.

FRANK E. BAUCHIERO.

STATEMENT OF THE AMERICAN IMPORTERS ASSOCIATION

The American Importers Association is a non-profit organization formed in 1921 to foster and protect the importing business of the United States. As the only Association of national scope representing American companies engaged in import trade. AIA is the recognized spokesman for importers throughout the nation. At present, AIA is composed of more than 1,150 American firms directly or indirectly involved in the importation and distribution of goods produced outside of the United States.

SUMMARY OF COMMENTS

The American Importers Association is in strong disagreement with the Treasury Department and the International Trade Commission on the following practices and provisions of the Antidumping Act as amended.

1. The Treasury Department practice of comparing each export transaction with average home market prices creates artificial dumping margins.

2. Application of section 205(b) of the Act results in antidumping duties based on assumptions which do not reflect economic realities and penalize the importer's position in the market rather than equalizing it vis-a-vis the American producer.

3. The regulations do not make a fair comparison between the home market price and the price for export to the United States because not all differences in circumstances of sale are allowed as adjustments.

4. The regulations prohibiting reimbursement to the importer of dumping duties by the exporter unfairly penalize the importer.

1. *Comparison of individual export transactions with average home market prices.*—Under section 153.16 of the Customs Regulations the Treasury Department looks for "sales at less than fair value" by calculating an average home market price and then comparing this artificial price with the price of each export sale. An average price implies that there are sales in the home market both above and below that price. Even if export sales were made with exactly the same volume sold at each price point within the same price spread as sales in the home market, such averaging would necessarily result in a finding of dumping on half the export sales. Sales at less than fair value would therefore be found where there is no dumping because an artificial standard has been created to calculate the dumping margin.

The act does not require this practice. In fact, Treasury does not follow this techniques in calculating the margin on actual entries once a dumping finding has been issued. Nevertheless, this short cut has the pernicious effect of establishing a basis for a dumping finding and requiring all imports of the subject product to post a bond until Treasury decides whether to impose a dumping duty on each entry.

Less than fair value sales should not be found if there are corresponding export and home market sales within comparable ranges of export and home market sales. Treasury's investigation would not be greatly complicated if it compared weighted averages of both home market and export sales prices.

2. *Section 205(b): Disregarding sales in the home market below cost of production.*—Section 205(b), which was added to the Antidumping Act by the Trade Act of 1974, provides that if sales in the home market or in third countries (the usual basis of comparison) are below the cost of producing the articles, then such sales are to be disregarded in the dumping comparison, and if the remaining sales are not adequate for comparison, resort is to be made to "constructed value." ("Constructed value" means direct cost of manufacture plus an arbitrary minimum of 10 percent for general expenses and 8 percent for profit.)

The result of the new rule is that if most sales in the home market and third countries are found to be even one percent or more below cost of production, then sales can be made for export only if prices reflect a profit of 8 percent and general expenses of 10 percent. This would deny the product to the U.S. market at a time when it may badly need it. If, on the other hand, there are found to be adequate above cost sales in the home market for comparison, the result is to ignore those below cost and thus arbitrarily to raise the home market standard for comparison and to create or enlarge dumping margins. This compounds the inequity resulting from the usual comparison of each export price (some of which are bound to be below average) with average home market price. Thus, a below average export price is compared with above average home market prices.

The addition of an arbitrary 8 percent profit margin plus 10 percent general expense factor can create inequities for the importer. The most recent application of this section was on importations of steel products. For this industry, as well as for many other low profit industries, an 8 percent profit margin is a dream, not a reality. If most major United States steel manufacturers were subject to this test, they would also be determined to be selling below constructed value.

Section 205(b) requires that exporters cover their full fixed costs as well as variable costs of production. Simple economics demonstrates that when demand falls it is a sound practice to sell at a loss as long as the sales price covers variable costs of production. If an exporter were to follow that practice while the American producer were to choose not to compete with that price but to continue covering both fixed and variable costs, a margin of dumping would be found in circumstances of healthy, competitive pricing. The American producer would maintain an economically artificial price level at the expense of the American consumer.

This provision appears to be contrary to the rules of the General Agreement on Tariff & Trade. It is not clear that the effects of this provision were contemplated by the Congress at the time the Trade Act was considered. Treasury regulations therefore, should provide for a higher threshold of evidence in complaints from domestic industry before cost of production investigations are initiated. Furthermore, the section should be repealed as soon as possible since it ignores commercial realities. A thorough analysis of the defects in section

205(b) is contained in the statement of attorneys Hemmendinger, Whitaker & Kennedy before this subcommittee. AIA concurs in that statement.

3. *Circumstances of Sale.*—No aspect of the administration of the Antidumping Act is more crucial than that of making appropriate adjustments for differences in circumstances of sale in comparing the home market and the import price.

In comments to the Treasury Department on July 29, 1971, on June 16, 1972, October 22, 1975, and October 11, 1976, the American Importers Association proposed a revision of 19 C.F.R. 153.10 to provide that ". . . such differences can be quantified in accordance with generally accepted accounting principles." This was a substitute for the language" . . . reasonable allowances will be made for bona fide differences in circumstances of sale if it is established to the satisfaction of the Secretary that the amount of any price differential is wholly or partly due to such circumstances." The AIA proposed to omit altogether the sentence: "Differences in circumstances of sales for which such allowanes will be made are limited, in general, to those circumstances which bear a direct relationship to the sales which are under consideration."

The AIA also submitted that the expression "if it is established to the satisfaction of the Secretary . . ." should be omitted, and instead there should be no implication in the Regulations with respect to burden of proof. The past comments of AIA are still valid and must be made again because the section remains unchanged.

The basic reasoning behind the position taken by the AIA is that the objective of the price comparisons required by the Act is to make a fair comparion between the home market price (or third country or constructed value) and the price for export to the United States. It has been long understood that he way to make such fair comparison is to work back to an ex-factory price by making appropriate deductions from the selected transactions. At present there is a serious element of unfairness in the administration of the Act because expenses for advertising, for promotion, for selling costs, for costs of warehousing, for bad debts, and similar expenditures are treated as invariably allocable pro rata to domestic and foreign sales. This is an assumption which is often wide of the truth. The Regulations appear to be based upon a model which may sometimes exist, but which is not invariable and not even typical—that is, a model in which the factory makes the goods, employs its staff, its facilities and its general sales expenditures equally for all its customers, and makes no special efforts or expenditures in the home market which it does not make for its export sales. The pattern which is much more prevalent is that a foreign company will incur expenses for its sales, advertising, and promotion expenses etc. in selling in the home market and that such expenses are not fairly allocable to its export sales because the comparable efforts are made by either the unrelated purchaser in the foreign country or the exporter's branch or subsidiary. Thus, frequently the unadjusted home market price is considerably higher than the export price for the genuine business reason that it bears expenses which are not related to the export operation.

Treasury spokesmen take public credit for strict enforcement of the Antidumping Act in the name of "fair trade." The refusal to grant adjustments for genuine differences in circumstances of sale is an unfair application of the Act which goes to its very heart.

That allocation of expenses imposes no theoretical or practical problem is indicated by the fact that the Treasury does this in deducting expenses in applying "exporter's sales price." That the expense must be directly related to the sale under consideration is a spurious concept which has no place in the Act. Jacob Viner, one of the authors of the 1921 Act, said in his classic treatise "Dumping: A Problem in International Trade" (1966 reprint, pages 281–282):

"The methods whereby dumping may be concealed so that a mere comparison of foreign market values and export prices will not reveal its occurrence, and the ways in which such a comparison may appear to disclose the existence of dumping whereas in reality dumping is not being practiced, are so numerous as to make it impracticable to attempt to define in an antidumping law with precision and certainty the circumstances which shall make imports subject to the dumping-duties, if it is desired to prevent evasion of the law through concealment of dumping and likewise to leave free from penalization imports which are only in appearance but not in reality being sold at dumping prices. The most satisfactory method of handling the problem is unquestionably to leave to the administrative officials a considerable measure of discretion in determining

in each case whether dumping is being practiced, and if so to what extent, but subject to the general rule that dumping shall be interpreted to mean the sale for export at prices lower than foreign market values, and that in comparing prices proper allowance shall be made for differences in prices which make a reasonable adjustment for differences in conditions and terms surrounding export as compared to domestic sales,."

As indicated in Viner's last sentence just quoted, the correct concept is that a reasonable adjustment should be made, not a reasonably direct one. The word "direct" has no place in the Regulations.

This is borne out by the statutory history of Section 202 of the anti-dumping Act of 1921. When Congress amended Section 202 in 1958 to provide for allowances for differences in quantities and circumstances of sale, it did so to bring the law into conformity with the fair value regulations promulgated in 1955 (Section 14.7(b)). Such regulations did not have any "direct" or "reasonably direct" requirement—on the contrary, they provided merely for reasonable allowances for any differences in quantities and circumstances of sale; and Treasury officials, in urging Congress to amend the law, made it clear that such allowances included advertising and selling costs granted in one market, but not in the other.

The correct test, it is submitted, is whether the amount of such differences can be determined under accepted accounting principles which are used constantly in business analyses, from tax returns to rate cases. In such analyses, it is often necessary to allocate costs and income, and reasonable formulas to do so can be found. The present practice has not permitted such an allocation to be made in arriving at "foreign market value."

It also needs to be emphasized that no specific items or classes of examples can be excluded per se from consideration in any case. That an item, such as research and development costs, is not expressly enumerated in the examples should not bar its consideration when it is found to be an appropriate allowance under generally accepted accounting principles.

The unfairness is compounded by placing a great burden on the foreign producer, the exporter, or the importer to prove "to the satisfaction of the Secretary" that the adjustment is justified. This language, which is derived from the statute, is appropriately interpreted to place a burden upon the producer, exporter, or importer, who is possessed of the trade information, to come forward with data and explanations. It is inappropriate to construe this language as meaning that when the available data is in, any doubts shall be resolved against the importer—but this is the actual construction. A dumping investigation is an investigation by the United States Government and not a proceeding in which the Government is an adversary. It is the responsibility of the Secretary to find the facts as impartially as possible. That an allocation of expenses may have to be made by some formula, rather than taken directly from the books of the company, does not permit a genuine difference to be disregarded. Furthermore, it is inappropriate to place a burden on the importer to trace precisely the circumstances of sale adjustments for each transaction at the risk of disallowance of the adjustments. Particularly in continuous sales situations, if the activity is appropriate for allowance, i.e., accepted by Customs and Treasury in the specific case, the costs corresponding to such activity should be allowed if the exporter is able to establish a connection between the aggregate expense figure and the approved activity, even if the connection cannot be established in a one-to-one manner.

Lastly, it remains unfair to consider all selling expenses in the U.S. market but only part of the selling expenses in the home market. It would seem elementary that in comparing such prices at the same level of trade, the same types of deductions would be made in the one market as in the other to work back to fairly comparable factory prices. The present practice and the new regulation require that if deductions for selling expenses are made from exporter's sales price (as required by the statute), then deductions in the same categories will be allowed from home market price. but not exceeding the amount per unit deducted from exporter's sales price. The rationale for the limit is that otherwise greater adjustments would be made in the exporter's sales price situation than in the purchase price situation. The conclusion is wrong because the premise is wrong—what this really shows is the inequity of the practice in the purchase price situation. There is no justification in principle for the limit. The Regulations and the practice depart from the statutory mandate to give due allowances to differences in circumstances of sale.

SECTION 153.10 FAIR VALUE: CIRCUMSTANCES OF SALE

As amended June 1976

153.10 Fair Value; circumstances of sale. (a General, In comparing the purchase price or exporter's sale price, as the case may be, with the sales, or other criteria applicable, on which a determination of fair value is to be based, reasonable allowances will be made for bona fide differences in circumstances of sale, if it is established to the satisfaction of the Secretary that the amount of any price differential is wholly or partly due to such differences. Differences in circumstances of sale for which such allowances will be made are limited, in general to those circumstances which bear a reasonably direct relationship to the sales which are under consideration.

(b) Examples. Examples of differences in circumstances of sale for which reasonable allowances generally will be made are those involving differences in credit terms, guarantees, warranties, technical assistance, servicing, and assumption by a seller of a purchaser's advertising or other selling costs. Reasonable allowances will also generally be made for differences in commissions. Except in those instances where it is clearly established that the differences in circumstances of sale bear a reasonably direct relationship to the sales which are under consideration, allowances generally will not be made for differences in advertising and other selling costs of a seller unless such costs are attributable to a later sale of merchandise by a purchaser: Provided, that reasonable allowances for selling expenses generally will be made in cases where a reasonable allowance is made for commissions in one of the markets under consideration and no commission is paid in the other market under consideration, the amount of such allowance being limited to the actual selling expense incurred in the one market or the total amount of the commission allowed in such other market, whichever is less. In making comparisons using exporter's sales price, reasonable allowance will be made for actual selling expenses incurred in the home market up to the amount of the selling expenses incurred in the United States market.

(c) Relations to market value: In determining the amount of the reasonable allowances for any differences in circumstances of sale, the Secretary will be guided primarily by the cost of such differences to the seller but, where appropriate, may also consider the effect of such differences upon the market value of the merchandise.

AIA Proposal

153.10 Fair Value; circumstances of sale. (a) General. In comparing the purchase price or exporter's sales price, as the case may be, with the sales, or other criteria applicable, on which a determination of fair value is to be based, allowance will be made for differences in circumstances of sale if such differences can be quantified in accordance with generally accepted accounting principles. Differences in circumstances of sale for which allowances will be made include generally those costs which are incurred in whole or in part in one of the markets under consideration which are not similarly incurred in the other market.

(b) Examples: Differences in circumstances of sale for which allowances will be made include, but are not limited to, differences in credit terms and reserves, insurance, guarantees, warranties, technical assistance, servicing, discounts, all selling costs including commissions and salaries, costs of advertising, promotion, warehousing, installation, as well as assumption by seller of a purchaser's distribution and marketing costs.

(c) Relations to market value. In determining the amount of the reasonable allowances for any differences in circumstances of sale, the Secretary will be guided primarily by the cost of such differences to the seller but, where appropriate, may also consider the effect of such differences upon the market value of the merchandise.

EXPLANATION OF PROPOSED AMENDMENTS

153.10:

(*a*) *General:*

1. Drops the standard of reasonableness in connection with the amount of such allowances.

2. Substitutes the test of "quantifiable by generally accepted accounting principles" for the test of "reasonably direct relationship to sales."

(*b*) *Examples:*

3. Expands and clarifies the Examples section by dropping the test of direct/indirect and substituting expenses actually incurred. Thus, items not allowed under existing regulations—such as advertising and other selling costs would be allowed, but only to the extent generally accepted as allocable under normal accounting practices.

4. Eliminates the proviso relating to commissions as unnecessary.

4. *Reimbursement of the importer for dumping duties.*—The present regulations (19 C.F.R. 153.49) forbid the foreign exporter to reimburse the importer for antidumping duties except in very limited, closely prescribed circumstances. These regulations are unfair to the independent importer.

The importer really never has any first-hand knowledge about home market prices in the country of exportation nor about the cost of production. To hold him responsible for such information is to require him to perform the type of investigation the Treasury Department undertakes, but on each and every product he imports.

The regulation has no express basis in the statute. Presumably recourse would be had to language which is found in both section 203 defining "purchase price" and 204 defining "exporter's sales price" namely:

"Less the amount if any included in such price attributable to any additional costs, charges and expenses, and United States import duties, incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States."

The additional duty cannot be inferred from section 203 or 204 of the Act because this would require interpreting the words "additional costs, charges and expenses, and United States import duties" as including a dumping duty which has not yet been found to exist and which is in the process of calculations under the procedures laid down in the Act. For the same reason, it cannot be said that the dumping duty is "included in such price" because it does not exist at that time. The words "import duty" as used in the Antidumping Act were not meant to include dumping duties, otherwise the language would have expressly so provided and the Act would have dealt with the problems just discussed.

Alternatively, it may perhaps be argued that, like a rebate, reimbursement is the purchase price. It simply is not. A guarantee can be regarded as something paid for along with the merchandise, but the payment made in performance of guarantee is sui generis; it is the outgrowth of a contract incidental to the contract of purchase.

The regulation is not required to carry out the purposes of the Act because the exaction of the dumping duty is almost always an unanticipated burden which is severe, whether it be paid by the importer or the exporter. The purpose of the Act is to eliminate the price differential (where the statutory tests are met) between the home market and the U.S. market. A single exaction does this no matter what party to the transaction pays it, and no matter whether it is passed on to the ultimate consumer. It would be a very unusual circumstance if market conditions permitted the exporter to anticipate a dumping duty, to contract to pay it, and to continue to do business paying a dumping duty for each entry. For such a situation, other remedies of law have to be invoked.

Thus the idea that the regulation is required to prevent frustration of the purpose of the Antidumping Act is unfounded. Reimbursement is either an act of equity made in the interest of good trading relations; or it is in performance of a guarantee. In either case, it is unreasonable and unjust to insist that the importer alone must bear the ultimate cost of the dumping duty. Pre-existing contracts and commercial arrangements may well prevent him from passing it on to his purchasers, and yet he probably had no way to know that the goods were sold at less than fair value.

The regulation already recognizes the propriety of a guarantee if made before the dumping question arose. There is no less reason to allow reimbursement in such case even if there was no contractual obligation. If made after the question arose, to forbid the guarantee implies that the question of dumping is a

simple matter against which the purchaser can with reasonable prudence protect himself, but this is often not true. The exporter may be much better informed on this question than the importer. The importer knows there is an investigation, but is often ignorant of some of the facts necessary to determining whether there are sales at less than fair value, and may remain ignorant even after the first dumping duties have been collected, since home market prices are subject to change.

The foregoing assumes an arm's length sale between unrelated parties. If buyer and seller are parent or subsidiary—or vice versa—then there is no way to ensure that the importer bears the burden. The exporting parent can find many ways to reimburse the subsidiary indirectly. Even worse, if entry is made for account of the seller, also a common situation, there is no way to apply the regulation. It is the exporter in that case who is responsible ab initio; if the importer of record is an agent, reimbursement cannot be barred without absurb—and probably unconstitutional—inequity Thus, the independent American importer is treated unfairly compared to the importer who is a subsidiary of the exporter even though the subsidiary is in a much better position to know about sales below fair value. If anything, the independent American firm should be treated better but actually it is treated worse. Dumping duties should be collected from the party intending to violate the Act—not from the party with no knowledge of the violation.

KECK, CUSHMAN, MAHIN & CATE,
Chicago, Ill., November 18, 1977.

Hon. CHARLES A. VANIK,
Chairman, Subcommittee on Trade, U.S. House of Representatives, Washington, D.C.

DEAR REPRESENTATIVE VANIK: Our office is general counsel for the Expanded Metal Manufacturers Association ("EMMA")[1] whose twelve members produce approximately 80 percent of United States production. EMMA urges the Committee in connection with the current oversight hearings to increase the resources available to the U.S. Customs Service for analyzing entries of products subject to dumping determinations.

On August 30, 1972, the Treasury Department made a final determination that Japanese expanded metal was being sold at less than fair value and on November 30, 1973, the United States Tariff Commission found that the American industry was being injured.[2] Dumping margins in 1973 averaged 8–11 percent but were in some instances as high as 40 per cent.

In spite of the use of dumping duties, the American expanded metal industry is still being victimized by the Japanese imports largely because of the lag time between importation and Customs review of the specific entries. For instance, Customs officials inform us that they are now reviewing entries of expanded metal made in December, 1976. They have also indicated that there were no dumping margins at that time. However, in August and September of this year the U.S. market was blanketed with new Japanese price lists which showed significant reductions. EMMA has submitted to the Customs officials at least six of these price lists which are as much as 45 percent lower than fully discounted American prices.

While it is true that many of the Japanese importers will have to pay substantial dumping duties when the recent entries are reviewed ten or eleven months from now, in the meantime there is extreme hardship on the American manufacturers. Many of our traditional customers have no choice but to purchase the less expensive imports.

There are obviously many reasons why an importer may choose to sell at less than fair value—establishing a market, obtaining currency, covering fixed costs, to name a few. Only a prompt assessment of extra duties can discourage such dumping by obviating whatever advantage the importer sees in these LTFV sales. The current low bonds and year long wait for imposition of dumping duties are not fulfilling the purposes of the Act and are resulting in great market erosion for EMMA members.

For these reasons we respectfully request that the Committee recommend that more funding and manpower be allocated to the Customs Service to ensure

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[1] See exhibit A for a listing of the member companies and their addresses.
[2] Investigation No. AA 1921–130 (T.C. Publication 629).

the timely assessment of dumping duties. Our comments are not meant to disparage the Customs personnel handling expanded metal. They have been extremely helpful in supplying guidance and information. However, additional resources must be employed in implementing the Antidumping Act if is to be at all effective.

Very truly yours,

BROCK R. LANDRY.

Enclosures.

EMMA MEMBER FIRMS

Acker Industries, Inc.
300 North Wewoka
Wewoka, Okla. 74884

Alabama Metal Industries Corp.
P.O. Box 3928
Birmingham, Ala. 35208

Chandler Expanded Metals Corp.
Route 2, Box 70B
Chandler, Okla. 74834

Coastal Expanded Metal Co., Inc.
P.O. Box 9797
Greensboro, N.C. 27408

Diamond Perforrated Metals, Inc.
P.O. Box 232
Gardena, Calif. 90248

Exmet Corp.
355 Hanover Street
Bridgeport, Conn. 06605

Keene Corp.
Building Products Division
Box 1468
Parkersburg, W. Va. 26101

Medalist Redi-Bolt
5334 Indianapolis Boulevard
East Chicago, Ind. 46312

Metalex Corp.
Box 399
Libertyville, Ill. 60048

Niles Expanded Metals
310 North Pleasant Avenue
Niles, Ohio 44446

Spantek, Inc.
1900 South Second Street
Hopkins, Minn. 55343

Wheeling Corrugating Co.
1134 Market Street
Wheeling, W. Va. 26003

WASHINGTON, D.C., *November 21, 1977.*

HON. CHARLES VANIK,
Chairman, Subcommittee on Trade, Committee on Ways and Means, Washington, D.C.

DEAR MR. VANIK: This letter is written in behalf of our client, General Glass Imports, Inc., of New Rochelle, New York.

General Glass is an importer of sheet glass from Romania and other countries.

Romanian sheet glass was the subject of a recent investigation conducted under the Antidumping Act of 1921. The investigation resulted in a tentative determination of sales at less than fair value, but the competing domestic industry was determined not to have been injured or to be likely to suffer injury in the future.

The fact that alleged less than fair value sales of sheet glass from Romania was adjudicated not to be a source of injury to a domestic industry was gratifying to our client, but not sufficiently to overcome the effect of tremendous business disruption and dislocation, lost profits, and large expenses visited upon General Glass.

There are two basic reasons which caused General Glass to suffer these consequences. These are, first, the treatment of state-controlled economy country constructed values by the Treasury Department, and second, the bonding requirements applicable to importations following a tentative determination of sales at less than fair value.

1. FOREIGN MARKET VALUE OF STATE-CONTROLLED ECONOMY COUNTRY MERCHANDISE

Section 164(c) of the Antidumping Act, as amended by the Trade Act of 1974, requires the Secretary of the Treasury to resort to third country home market prices or constructed values to determine foreign market value if the "economy of the country from which the merchandise is exported is state-controlled *to an extent* that the sales of such merchandise . . . do not permit a determination of foreign market value. . . ." [Emphasis added.]

General Glass, in cooperation with the Romanian exporter, presented evidence to the Treasury Department to demonstrate the reliability of a determination of foreign market value based upon either sales to third countries or constructed home market values. These proofs took the position that the Secretary was not required to make a specific finding, based on the facts presented, regarding the extent of state control vis-a-vis the possibility of a foreign market value determination. Treasury maintained that the Congress, in enacting section 164(b), manifested the intention that costs incurred in or by non-market economy countries, no matter how calculated or determined, were to be disregarded.

We submit that the phrase "to the extent" in section 164(b) shows a different intention; that the Secretary must examine the facts of each case and must, when reasonable, determine foreign market value based upon export prices or constructed values in the country of exportation.

The Treasury's rigid disregard of the facts presented in the Romanian sheet glass case inevitably resulted in a tentative determination of sales at less than fair value since the product upon which foreign market value was determined was superior to and dissimilar from Romanian sheet glass in virtually every respect except nomenclature.

The less than fair value determination was followed by an injury investigation in the International Trade Commission, the outcome of which was mentioned above. We believe that the entire injury proceeding could have been avoided but for the rigid application of section 164(b), an application which defeats the aims of effective and expeditious action under the Antidumping Act.

The foregoing suggests that importers and foreign exporters, along with American producers, have a substantial interest in efficient and expeditious action under the Antidumping Act. An example of the importance of that interest is discussed below.

2. THE BONDING REQUIREMENT

We have seen that Treasury's application of section 164(b) has resulted in potentially avoidable less than fair value determinations, at least in the case under discussion. The tentative determination brought section 167 of the Antidumping Act, requiring the posting of bonds equal to the estimated value of merchandise subject to the notice withholding appraisement, into operation.

Like General Glass, many importers are small businessmen. The practical effect of section 167 is to put them out of business during the pendency of the injury phase and for months thereafter. They cannot afford the risk of losing the injury phase, and so can neither import nor reorder until the injury phase has ended.

Obviously, this interim "remedy" is too severe. We respectfully suggest that a bond in an amount equal to the potential antidumping duties themselves is more than adequate. A presumption of innocence until proven guilty would be even better.

In behalf of General Glass we respectfully request that the Subcommittee on Trade address itself to the issues raised in this letter. In the one case, the interpretation of section 164(b), we believe that clarification, not legislation, is all that is required. In the case of section 167, we request that an amendment of the statute be considered.

Very truly yours,

RIVKIN SHERMAN AND LEVY,
JOSEPH S. KAPLAN.

STATEMENT OF NATIONAL MACHINE TOOL BUILDERS' ASSOCIATION

The National Machine Tool Builders' Association (NMTBA) is a national trade association with 400 members accounting for about 90 percent of the United States' machine tool production. Most of the member companies are small businesses. Over 70 percent of these companies have less than 250 employees. The entire industry has approximately 86,000 employees.

We are grateful for this opportunity to present the machine tool industry's views on the operation and effectiveness of the antidumping laws.

NMTBA has previously testified before this Subcommittee on the U.S. foreign trade deficit and its implications for domestic machine tool builders and their employees. Our testimony of November 4 demonstrates NMTBA's growing concern with the skyrocketing trend of machine tool imports. The foreign share of the U.S. machine tool market was only 7.1 percent on 1959, and it fell to as low as 5 percent in the mid-1960's. By 1967, however, it had grown to 12 percent, and

today imports constitute over 21 percent of the U.S. market. As a result of this dramatic increase in imports, which has been led by Germany and Japan, the U.S. machine tool balance of trade surplus has declined from an average of 5-to-1 fifteen years ago to approximately 1-to-1 today, and the metalcutting trade balance has already gone into the red. If this downward trend continues—as we fear it will, due to a predicted slow economic growth in Japan and Europe—it is likely that the total American machine tool industry surplus will almost disappear next year and, for the first time ever in our industry, there will be a negative balance in 1979—perhaps as high as 25 percent.

On the other side of the balance of trade equation, the prognosis for U.S. exports is equally alarming. Although the world machine tool market has been growing steadily and the dollar volume of U.S. exports has generally been rising, American exports of machine tools as a percentage of all world machine tool exports have been falling. In 1964, 21 percent of the world's machine tool exports were produced in the United States. That share has fallen to 9.5 percent today, representing a 55 percent loss in America's share of the world machine tool exports market in only 12 years.

In summary, our share of the U.S. market has declined from 95 percent to 79 percent over the last twelve years, while, at the same time, our share of the world's export market has fallen from 21 percent to 9.5 percent. As a result, the U.S. share of the world's total machine tool output has declined 50 percent in twelve years, and our industry is about to face its first trade deficit.

Over the years, the American machine tool industry has steadfastly remained an outspoken advocate of free trade. In the past, as well as today, we have supported the principle of free, open and fair competition among all the world's machine tool builders. Our problem, however, is not free trade. It is unfair trade. As the Japanese and European economies continue to expand at a slow rate, the export pressure will continue. These governments will continue to refund value added taxes, maintain direct subsidies and export promotion subsidies, finance the working capital needs of their exporters at preferential rates, bail out bankrupt builders and maintain other aid, direct as well as indirect, which amounts to subsidies for foreign industries.

Against this background of continued predatory export policies, our industry believes that vigorous enforcement of the antidumping laws is essential to insure the maintenance of a free trade economy. To the extent that the Antidumping Act is designed to deter and penalize those who engage in predatory and other anticompetitive practices in international trade, that Act should constitute an effective tool in preserving the goal of free and open trade. However, there appear to be aspects of the Act, especially in its administrative regulations, in which a significant gap exists between the intention of the law and the actual administration and enforcement of the law. In discussing these aspects and recommending changes, we speak not as an industry which has utilized the antidumping laws in the past but as one which has seen a steady increase of imports and now realizes that the long-term impact of these imports on our domestic market could be ruinous.

We speak also as an industry composed primarily of small companies which individually lack the expertise and financial resources to pursue the cumbersome, expensive and time-consuming procedures under our present trade laws and administrative practices. The machine tool industry, like the steel industry, is vital to America's economic and military strength, yet the industry's traditional leadership may be seriously eroded unless the remedies against unfair trade practices are as easily available to the small businessman as to the giant corporation.

We believe that a sensible approach to an effective realization of the goals of the antidumping laws is S. 2317, introduced last week by Senator Heinz, which would amend the Antidumping Act of 1921, the Trade Act of 1974 and the Tariff Act of 1930 to improve certain procedures relating to unfair foreign trade practices. The bill's cosponsors, Senator Randolph, Bayh, Percy, Glenn, Metzenbaum, Anderson, Stevenson, Moynihan, DeConcini, Schweiker, Hatch and Allen, symbolize the nonpartisan support—support across the ideological spectrum—which exists in this country for a strengthening of our trade statutes to insure that they achieve their original goals.

S. 2317 provides five significant procedural amendments to the Antidumping Act of 1921, as amended, 19 U.S.C. § 160 et seq., which are designed to streamline investigatory procedures and mandate a more effective imposition of penalties.

First, the bill would amend section 208 of the Antidumping Act, 19 U.S.C. § 167, to change the handling of the imposition of duties. As the Act and its regulations

provide now, after an initial finding of dumping is made by the Secretary of Treasury as provided in section 201, 19 U.S.C. § 160, an importer is required to post a bond to cover the imposition of prospective duties. The bill would require the importer to pay in escrow the full amount of estimated dumping duties, pending a final determination of less than fair value sales. If, upon final determination, the finding is not upheld, the amount of dumping duty paid in escrow would be returned with interest from the date on which the duty was paid. Interest rates would be paid at the annual rate in effect on the date on which such duty was paid, as established under section 6621 of the Internal Revenue Code. By significantly increasing the financial burden on the importer, this amendment would serve as an effective deterrent to violations of the Act.

Second, the Bill would significantly streamline and expedite Section 209 of the Antidumping Act, 19 U.S.C. § 168, by providing that after the Secretary of Treasury makes a final determination of dumping, an across-the-board assessment of duties would follow, based on the fair value data compiled during the Treasury Department's dumping investigation be conducted, rather than utilizing the current system of case-by-case assessment based on new figures. This would significantly reduce the time lag in antidumping determinations.

Third, the bill would amend section 201 of the Act, 19 U.S.C. § 160, to expedite the two-stage investigatory process currently mandated by the Act by providing that the International Trade Commission's (ITC) three-month injury investigation would run concurrently with, rather than follow, the Treasury Department's three-month determination of sales at less than fair value.[1] This would cut three months off the current 13-month investigatory process.

A simultaneous determination of findings at less than fair value and injury might aid foreign as well as domestic manufacturers. The inequities under the current system are clear: A finding of sales at less than fair value may be made under the Act, even though there may be no injury, and the withholding of appraisement and bond requirements can impose substantial costs on an importer. Simultaneous resolution of these questions would result in the imposition of penalties only if domestic sales at less than fair value have caused or are likely to cause injury to the relevant U.S. industry. Moreover, the domestic industry would welcome any amendment which would expedite the process and provide quicker enforcement and relief.

Fourth, the bill would further streamline procedures under the Act by eliminating the possibility of interim referral to the ITC during the six-month Treasury Department investigatory process.

Lastly, the bill would amend the Act to require the Treasury Department to submit to Congress an annual report regarding the status of its actions to enforce the Act.

In addition to amending the Antidumping Act, S. 2317 contains several proposed amendments to other trade statutes:

It would amend Section 203 of the Trade Act of 1974, 19 U.S.C. § 2253, to provide for a two-House Congressional override of the President's decision to revise or revoke an earlier decision. In addition, it would permit a Presidential redetermination only once every twelve months, and it would provide that the Presidential determination must be made within 30 days of receipt of the required advice from the ITC and the Departments of Labor and Commerce.

It would amend Section 301 of the Trade Act of 1974, 19 U.S.C. § 2411, relating to foreign import restrictions and export subsidies, to provide that the Special Representative for Trade Negotiations must initiate an investigation within 45 days after the filing of a complaint, complete the investigation and transmit to the President its determination and recommendations within six months thereafter, and, at the request of any interested party, commence hearings reviewing its determination within 45 days of receipt of determination. Section 301 currently contains no time limitations.

It would amend Section 303 of the Tariff Act of 1930, 19 U.S.C. § 1303, relating to countervailing duties, to provide that the Secretary of Treasury must initiate an investigation within 30 days of receipt of a complaint or petition.

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[1] Several commentators have recommended simultaneous determination of the dumping and injury questions. *See, e.g.*, Myerson, "A Review of Current Antidumping Procedures: United States Law and the Case of Japan," 15 Colum. J. Transnat'l L. 167, 194 (1976). Moreover, Article VI of the General Agreement on Tariffs and Trade (GATT) provides for simultaneous consideration of these questions. See Agreement on Implementation of Article VI of GATT, opened for signature June 30, 1967, 19 U.S.T. 4338, T.I.A.S. No. 6431, art. 5(b).

It would amend Section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, relating to unfair methods of competition, to provide that an investigation must be commenced within 30 days of receipt of a complaint.

These procedural reforms of the trade acts, which would streamline the present processes for consideration of complaints and provide more effective penalties, represent an aggressive approach which is needed to maintain the free trade system while aggressively—and fairly—preventing unfair trade practices without violating due process considerations. By providing quicker relief for domestic industries and stiffer penalties for dumping, S. 2317 should strengthen our trade laws and establish stronger deterrents to dumping.

While S. 2317 represents an important start, we feel that this Subcommittee should study other aspects of the antidumping laws as well as in order to effectuate further improvements. For example, we believe, as we have indicated, that the average machine tool builder—or other small businessman—generally lacks the necessary resources to meet the threshold statutory requirements to initiate a dumping investigation. A single reading of 19 C.F.R. § 153.27 (1977), which contains the nature of the information required to allege a colorable charge of dumping, would be sufficient to discourage most small and medium-sized business firms from utilizing the Antidumping Act, even though they may be victims of unfair foreign trade practices. Moreover, some of the information required by § 153.27, such as evidence of home market price, discounts, freight costs and other aspects of the terms and conditions of private contracts to which domestic sellers are not a party, virtually obligate a businessman seeking to bring an antidumping complaint to hire overseas detectives to pry into foreign competitors' confidential business information.

NMTBA urges this Subcommittee to consider a remedy which would lessen, or perhaps eliminate altogether, the heavy burden imposed on a domestic company to persuade the Treasury Department to open an investigation. For example, one method to eliminate the burden altogether would be to provide statutory guidelines, perhaps keyed to reference prices or market share fluctuation, which would automatically require a Treasury Department investigation if the relevant indicators suggested that certain goods were being dumped on the U.S. market. We do not mean to suggest that this system would necessarily have to be the exclusive procedure necessary to initiate an investigation; it might well complement other alternative mechanisms. But by maintaining current data on key indicators, this "early warning" system would help to reduce the lag time between a suspicion of dumping and the accumulation of the detailed and sometimes hard-to-obtain facts necessary to make a dumping determination.

Another area we urge this Subcommittee to explore concerns the timing of the assessment of duties after a dumping finding has been made. S. 2317 addresses the financial aspects of these duties, but consideration should also be given to the long delay between entry of dumped goods into the U.S. market and the ultimate assessment of dumping duties. At present, the initiation of a dumping investigation merely serves as a signal to the foreign violator to import as many goods as possible into the United States before an adverse determination is made. As a result, imports which enter the United States after a dumping investigation has begun but before a final determination has been made ordinarily escape dumping duties even if they are sold at less than fair value. We urge this Subcommittee to explore a remedy which would deter foreign competitors from importing products at less than fair value while a dumping proceeding is under way.

A third area we urge this Subcommittee to explore more thoroughly is the assessment of penalties for violations of the Antidumping Act. Again, S. 2317 constitutes a start, but consideration should be given to other alternatives, including more severe penalties for second violations.

The injury determination made by the International Trade Commission should also be re-examined to determine whether a lower burden of proof should be required to prevail on a finding of injury. We realize that the ITC's injury determination turns on the facts and circumstances of each indvidual case, but we urge this Subcommittee to explore possible statutory provisions that would, for example, establish certain rebuttable presumptions in favor of injury, on the basis of such factors as a declining market share by domestic industry, price depression or suppression, reduced profits, high unemployment, excess capacity, or other factors.

Although we have urged a lessening of the burden on a domestic firm to initiate a dumping investigation, we strongly urge this Committee to investigate the possibility of allowing more participaton by the domestic industry once an inves-

tigation has been initiated. We recognize that much of the information collected by the Treasury Department is confidential business data, but at the same time, some type of "sunshine" procedures should be promulgated in order to allow the domestic industry to monitor the course of an investigation. Leaving the domestic industry out in the dark in this day of procedural safeguarding invites an unwarranted spector of political influence.

Lastly, we urge the Congress to take a very hard look at exploring other means of aiding domestic industry besides reform of the antidumping laws. In this respect, we note that most of the senators who joined Senator Heinz in introducing S. 2317 also joined Senator Bayh in cosponsoring S. 2318, which addresses the other side of the import coin by amending the 1933 "Buy American" Act to stimulate more governmental purchasers of domestic articles. Although S. 2318 is not directly related to the operation and enforcement of the antidumping laws (and has been referred to the Senate Governmental Affairs Committee), it would insure that public funds are not used to purchase foreign products sold in the U.S. at less than fair value prices.

For example, we have been advised that the Department of Defense is seriously contemplating awarding a subcontract for a turnkey machine tool project for the production of a key component of a major new U.S. weapons system to a Japanese firm, which has underbid the leading U.S. firm by at least $1 million. If DOD does, in fact, award this subcontract to Japan, it will mean that an agency of the U.S. Government will have used taxpayers' funds to export jobs to another country. It will mean that the Defense Department will have hindered the ability of the U.S. machine tool industry to remain strong and capable of providing the machinery necessary to our nation's defense in a national emergency. Lastly, it will mean that Japan will have received all of the top-secret drawings, specifications and other technology necessary for the production of a major new U.S. weapons system. The wisdom of such a decision escapes us.

S. 2318 would amend sections 1 and 2 of Title III of the "Buy American" Act (41 U.S.C. §§ 10a and 10c) as follows:

The bill would extend the Act to apply to any contract, more than half of which is financed by federal appropriations, subsidies, loans, grants, or loans which are federally insured or guaranted. It thus expands the preesnt statute to include state and local governmenta lagencies which receive more than half of their funding from the federal government.

The bill would set a statutory definition for a domestically manufactured product. The product would be deemed to be produced in the United States if the cost of the components which are mined, produced or manufactured in the United States exceeds 75 percent of the cost of all the components.

The bill would establish a preference floor of 15 percent and a ceiling of 50 percent of the value of the contract for articles, material or supplies mined, produced or manufactured in the United States. In short, this bill will directly aid domestic industries which may be the victims of unfair foreign trade practices.

We urge the Congress to explore S. 2318 and other alternative measures which would complement the Antidumping Act and protect American businesses and their employees from being victimized by foreign unfair trade practices.

We appreciate this opportunity to state our industry's concern on this matter of vital imporatnce. We are hopeful that this Subcommittee will—by exercising its legislative or oversight function, or both—insure that the administration of the Antidumping Act and other "fair trade" statutes does not require the demise or serious and permanent debilitation of important American industries—and widespread layoffs of their workers—before curative and corrective measures are employed.

Statement of the United States Fastener Manufacturing Group

SUMMARY

The statement recommends an amendment to close a loophole in the Antidumping Act. That loophole permits raw materials to be dumped by one foreign country in another foreign country where the materials are converted for shipment to the United States market.

STATEMENT

The United States Fastener Manufacturing Group wishes to bring to the Committee's attention a particular dumping practice that can be harmful to American

industries, but which cannot be remedied by the existing provisions of the Antidumping Act.

This practice involves the dumping of raw materials by Country A into Country B, where they are converted to finished products exported to the United States. In that way, manufacturers in Country B are able to obtain raw materials at a lower cost than they could in the absence of such dumping. This enables them to charge a lower price on sales of the finished products in the United States market in competition with the same kind of products made by American manufacturers.

Taiwanese fasteners a conduit for Japanese dumping of wire rod

Evidence of this practice was elicited in hearings before the International Trade Commission held on September 29 and 30, 1977, in an escape clause case involving bolts, nuts and large screws (Investigation No. TA-201-27). A witness representing the fastener industry of Taiwan stated that Japanese mills were selling low-carbon steel wire rod (the raw material for most fastener manufacturing) to Taiwanese fastener manufacturers at about 11 cents per pound, CIF Taiwan. Earlier a witness for the American industry presented evidence that Japanese mills were selling low-carbon wire rod for consumption in Japan at an ex mill price of about 13 cents per pound. It is apparent, then, that the wire rod price to Taiwan is a dumping price.

Since a substantial proportion of the fasteners produced in Taiwan are shipped to the United States, the net effect is that Taiwanese fasteners represent a conduit for the dumping of Japanese wide rod in the United States. The principal impact of that udmping practice, however, is on the American fastener producers.[1]

Loophole in the Antidumping Act

The Antidumping Act does not provide a remedy for the dumping practice described above. Oddly enough, section 201(a) of the Act is written in terms of a determination:

"That a class or kind of foreign merchandise is being, or is likely to be, sold in the United States or elsewhere at less than its fair value . . ."

We do not know why the phrase "or elsewhere" was included. At first blush it suggests that the situation described herein is covered by the Act. However, the technical provisions of the Act require the price of the imported article (the Taiwanese fasteners) to be compared with the price of such fasteners sold for consumption in the home market (Taiwan) or in third-country markets (or with their constructed value where appropriate). Whether the Japanese steel wire rod is being sold in Taiwan at a dumping price is immaterial. As a result, this type of dumping can be practiced with impunity because of this loophole in the Antidumping Act.

Suggested amendment

We believe that this type of third-country dumping of raw materials to be sold in the United States in converted form is an unfair trade practice. We urge the Committee to amend the Antidumping Act to provide an effective remedy against it. A closely analogous precedent for dealing with such converted products appears in the Countervailing Duty Law (19 USC 1303). Some of the language in that law could appropriately be added to the first sentence in section 201(a) of the Antidumping Act (19 USC 160(a)), as follows:

"Whenever the Secretary of the Treasury (hereinafter called the "Secretary") determines that a class or kind of foreign merchandise is being, or is likely to be, sold in the United States or elsewhere at less than its fair value, *whether the same shall be imported directly from the country of production or otherwise, and whether such article or merchandise is imported in the same condition as when exported from the country of production or has been changed in condition by manufacture or otherwise*, he shall so advise the United States International Trade Commission (hereinafter called the "Commission"), and the Commission shall determine within three months thereafter whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States." (The suggested new material is italicized.)

Conforming amendments would, of course, have to be made in the more technical provisions of the Act.

We hope the foregoing will prove useful to the Subcommittee in its consideration of "the adequacy of the existing statute to deal with the problems of unfair import pricing practices."

[1] It should also be noted that there is no wire rod production in Taiwan.

The United States Fastener Manufacturing Group is an ad hoc committee of 29 companies, formed to pursue avenues of relief for the American industrial fastener industry which is heavily impacted by imports. The Group's membership accounts for the majority of steel nuts, bolts and large screws produced in the United States. The Chairman of the Group is Mr. W. Tom ZurSchmiede, Jr., President of Federal Screw Works in Detroit, Michigan. A membership list is attached.

U.S. FASTENER MANUFACTURING GROUP MEMBERSHIP LIST

Alpha Bolt Co., 1524 E. 14 Mile Rd., Madison Heights, Mich. 48071.
Armco Steel Corp., 7000 Roberts Street, Kansas City, Mo. 64125.
Atlas Bolt & Screw, 1130 Ivanhoe Road, Cleveland, Ohio 44193.
Bethlehem Steel Corp., Bethlehem, Pa. 18016.
Jos. Dyson & Sons, Inc., 33300 Lakeland Blvd. Eastlake, Ohio 44094.
Esna Division/Amerace Corp., 2330 Vauxhall Road, Union, N.J. 07083.
Everlock Detroit, A Microdot Co., 433 Stephenson Highway, Troy, Mich. 48084.
Fastener Systems, 25801 Richmond Rd., Cleveland, Ohio 44146.
Federal Screw Works, 3401 Martin Avenue, Detroit, Mich. 48210.
Ferry Cap & Set Screw Co., 2150 Scranton Road, Cleveland, Ohio 44113.
E. W. Ferry Screw Products Co., 5240 Smith Road, Cleveland, Ohio 44142.
Gripco Fastener Division of Mite Corp., 111 E. Broad Street, South Whitley, Ind. 46787.
Huck Manufacturing Co., Waco Division, P.O. Box 8117, 8001 Imperial Drive, Waco, Tex. 76710.
Lake Erie Screw Corp., 13001 Athens Avenue, Lakewood, Ohio 44107.
The Lamson & Sessions Co., Bond Court, 1300 East Ninth Street, Cleveland, Ohio 44114.
Lewis Bolt & Nut Co., 504 Malcolm Avenue, S.E., Minneapolis, Minn. 55414.
MSP Industries Corp., Subsidiary of W. R. Grace & Co., Michigan Screw Products Division, 6400 East Eleven Mile Road, Center Line, Mich. 48015.
MacLean-Fogg Co., 1000 Allanson Road, Mundelein, Ill. 60060.
Mid-West Fabricating Co., West Bent Bolt Division, 8623 Dice Road, Santa Fe Springs, Calif. 90670.
Modulus Corp., Suite 400, 100 North Main Street, Chagrin Falls, Ohio 44022.
National Lock Fasteners, Division of Keystone Consolidated Industries, Inc., 4500 Kishwaukee Street, Rockford, Ill. 61101.
National Machinery Co., Tiffin, Ohio 44683.
R. E. C. Corp., 2 Sheraton Plaza, New Rochelle, N.Y. 10801.
Ring Screw Works, 31550 Stephenson Hwy., Madison Heights, Mich. 48071.
Russell, Burdsall & Ward, Inc., 8100 Tyler Blvd. Mentor, Ohio 44060.
Standard Pressed Steel Co., Benson-East, Jenkintown, Pa. 19046.
Townsend Division of Textron, Inc., 1015 Seventh Avenue, P.O. Box 370, Beaver Falls, Pa. 15010.
Wyandotte Industries Inc., 4625 13th Street, Wyandotte, Mich. 48192.
Zelda Fastener Co., Inc., P.O. Box 517, 2175 W. Maple Road, Walled Lake, Mich. 48088.

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THE WEEKLY ON POLITICS AND GOVERNMENT OCT. 22, 1977/NO. 43

Protecting American Steel...
...Helping Victims of Trade
A Taxing Look at Lobbying

TRADE REPORT

The Anti-Dumping Laws— Rx for the Steel Industry?

Caught between rising demands to protect the steelmakers and its own commitment to free trade, the Administration is turning to a strategy that is fraught with risks.

BY ROBERT J. SAMUELSON

The Carter Administration has stumbled across a new antidote for the steel blues: the anti-dumping law.

Caught between rising demands to protect the steel industry from cheap imports and its own rhetorical commitment to free trade, Administration officials—from President Carter on down—are advising steel executives to look for relief under the anti-dumping statute. And, interestingly, the industry seems willing to go along.

It almost seems too good to be true—and it may be.

Examined closely, aggressive application of the anti-dumping law to steel imports seems to involve most, or all, of the risks of other protectionist devices, including a speedup of domestic inflation and retaliation by foreign trading partners.

Moreover, the mere prospect of steep anti-dumping duties against most European and Japanese steel—a possibility in the next six months or year—could build pressure for more formal regulation of the world steel trade, anything from a legalized cartel (which the Administration says it opposes) to a set of commonly accepted ground rules specifying when countries would be allowed to impose restrictions against imports.

The basic economic and political pressures for such an accommodation remain awesome. The world steel industry today is a case of too much supply—steel mills—chasing too little demand. And, unless the world recovery accelerates more rapidly than anticipated, the situation may remain that way until at least the early 1980s. *(For background, see Vol. 9, No. 23, p. 862.)*

The new consensus on how to defend against cheap imports and remain loyal to free trade emerged after a four-hour White House meeting Oct. 13. President Carter lectured steel executives, union leaders, and interested Members of Congress on the evils of protectionism.

"It's an erroneous thing to present to the American people that there is a simplistic, quick, painless solution to the steel industry's problems—and that is to erect trade barriers around our country and not to let foreign steel come into the nation," Carter said.

But, at the same time, the President declared that "free trade has got to be fair trade" and told the group that the Administration would "vigorously" enforce the anti-dumping law. Normally, this law is intended to prevent exporters from selling products more cheaply abroad than they do at home. In a press conference afterward, steel executives said that they, too, preferred anti-dumping relief to formal import restrictions—a reversal of a previous stance.

APPEALING SOLUTION

Superficially, the appeal of anti-dumping is undeniable. American producers agree to compete as long as foreign exporters agree to sell at "fair" prices. In turn, the Administration avoids both a bruising battle in Congress over steel import restrictions and the discomfort of trying to negotiate with affected trading partners, primarily the European Community and Japan. Last year, the steel import bill totaled $4.0 billion, representing about 14 per cent of U.S. shipments. About three-fourths of the 14.3 million tons came from Europe and Japan.

But, in practice, anti-dumping's appeal may tarnish.

If the steel producers have suddenly warmed to the anti-dumping law—an avenue of relief they long condemned as cumbersome—it's because the Treasury Department is using a new standard for determining dumping charges. In a case decided early this month, that standard resulted in a tentative decision to slap anti-dumping duties of about 32 per cent on nearly $200 million worth of Japanese carbon steel plate.

If the same standard is applied against other imports, there's a good chance that the steel industry would receive more, not less, protection than would be possible under any quota system likely to be negotiated.

Such protection, of course, would provide more room for price increases—something the companies feel they desperately need. In the first half of 1977, for example, steel companies averaged only slightly more than one cent of after-tax profits on every $1 worth of sales. In 1976, the average for all manufacturing companies was about five cents. But Administration economists have resisted import restrictions precisely because they might be inflationary.

Not surprisingly, a number of steel companies are reported to be preparing additional dumping complaints. U.S. Steel Corp. already has filed a complaint against almost all remaining Japanese steel, which Treasury has agreed to investigate; five American firms have filed a complaint against Japanese and Indian producers of steel wire strand; and other complaints are expected soon against European companies.

"When those are filed, there is going to be an outcry in Europe. They're going to scream like stuck pigs," says one U.S. official.

Finally, there is one more potential problem with the anti-dumping strategy: not everyone believes that Treasury's measure of "fair" prices is, in fact, "fair." Specifically, Japan contends that the 1974 amendments to the U.S. anti-dumping law violate the international dumping code. The Japanese are expected to complain formally to the GATT

President Carter has come under pressure from steel workers to protect them from cheap steel imports.

(General Agreement on Tariffs and Trade) secretariat later this month, and, if the Japanese interpretation is upheld, there could be retaliation against American exports.

The Japanese retaliation could equal the damage caused to their trade by the dumping duties, and, if heavy duties were applied to all Japanese and European steel, there could be a sizable trade collision—precisely what the Administration says it wants to avoid. If, in these circumstances, the Administration altered dumping duties, it would be thrust back into the position of having done little, or nothing, for the American steel industry.

In short, the steel problem hasn't been made to vanish miraculously, and whether the Administration has anticipated future problems is unclear.

Earlier this year, Robert S. Strauss, the President's Special Representative for Trade Negotiations, urged some steel companies to file anti-dumping petitions instead of complaining to him. There is some speculation that Strauss sees the threat of the dumping duties as leverage to push trade talks, either inside or outside the Geneva multilateral trade negotiations.

Such bargaining would presumably lead to an agreement on steel, an over-all agreement on import "safeguards"—protective steps, such as quotas—that countries would be allowed to adopt when their domestic industries faced substantial injury from imports, or both. One U.S. concession in such bargaining could be changes in the controversial American dumping law.

But other officials say that the anti-dumping strategy is mainly intended to "buy time" and that many of the implications—especially of the application of the new dumping standards mandated by the 1974 Trade Act (88 Stat 1978)— haven't been thought through.

"There's a mass of straightening out as to how the dumping is going to work and how it fits in with over-all trade policy," said one official. He added that the anti-dumping findings could have "disastrous implications" for the Europeans.

As for President Carter, he seems to have been only dimly aware of the dumping law until recently. He told the White House meeting that the anti-dumping law hadn't been vigorously enforced. "I have not been aware of this derogation of duty until just this week. We're going to do something about it, but we need your help," he said.

STEEL'S PROBLEMS

The Administration's newfound infatuation with the dumping law emerges as the magnitude of the world steel industry's problems—and America's—have come into clearer focus. Steel mills are idle everywhere. In Japan, the industry is operating at only about 70 per cent of capacity, the U.S. industry at about 78 per cent, and the European at 60 to 65 per cent.

That enormous surplus capacity has depressed prices and profits, caused layoffs and plant shutdowns, and spawned acrimonious charges that Japanese and European steelmakers are subsidizing exports abroad to maintain employment at home. In the last five months, imports as a percentage of total U.S. steel shipments have neared 20 per cent, up sharply from last year's 14 per cent.

In turn, the worldwide glut simply reflects the impact of the 1974-75 recession on steel demand and the inability of the sluggish recovery to restore production. In particular, new industrial investment—normally accounting for 40 to 50 per cent of steel demand—has lagged badly.

Nor is there any quick relief in sight. A somber analysis by the Central Intelligence Agency estimates that world steel demand (including net trade with Communist countries) could total 530 million tons in 1980. That's only 7 per cent more than actual demand in 1973 and less than the existing capacity of 600 million tons. Yet, a number of producers—particularly Japan and developing countries—are building new plants as a result of decisions made during the 1973-74 steel boom. By 1980, the CIA estimates capacity at a minimum of 638 million and says it could be more.

Until recently, the Administration had ignored the industry's complaints, hoping

that protectionist pressures would abate. In fact, they have done just the opposite. Facing persistently weak markets, companies have taken increasingly harsh measures to eliminate high-cost plants and increase their profits.

The resulting shutdowns and layoffs have coalesced congressional support for steel. "We're like a sleeping giant which has got a hell of a lot of potential . . . if people don't pay attention," says Rep. Charles J. Carney, D-Ohio., who heads the Congressional Steel Caucus. The caucus claims 140 members.

Carney's 19th District includes Campbell, Ohio, where the Youngstown Sheet and Tube Co. recently decided to close part of its mill, eliminating 5,000 jobs. Other major shutdowns include Bethlehem Steel Corp.'s decision to cut back operations at Lackawanna, N.Y., and Johnstown, Pa., involving a total of 7,300 jobs, and the bankruptcy of Alan Wood Steel Co. in Pennsylvania with the loss of 2,300 jobs.

The Administration's early reluctance to assist the industry reflected a realization that virtually anything it might do—restrict imports, provide tax relief or relax pollution requirements—could backfire. These steps could increase inflation, inflame relations with trading partners, and invite similar demands for help from other industries.

Publicly, Administration officials still voice the same concerns, but under the glare of layoffs and shutdowns, the President has tried to appear more sympathetic. In late September, for example, he appointed Anthony M. Solomon, undersecretary of the Treasury for monetary affairs, to head an interagency group to examine ways to help the industry.

The industry itself has long offered a number of suggestions. Aside from the relaxation of antipollution requirements, it has pressed for tax relief. The two most important items involve the immediate write-off of all investment in government-mandated pollution and safety equipment and a shortening of the depreciation lives—now estimated to average about 18 years—on most basic steelmaking equipment. Both these measures would allow more of a company's investment spending to be deducted immediately as a business expense, rather than having those deductions stretched over a period of years.

Solomon says his group hopes to have proposals within six weeks, but isn't saying much else. "We're going to be looking at the growth in value of investment that would be needed for modernization—what benefits that would bring the industry and the national economy," he said in an interview.

DUMPING LAW

Given the steel industry's preoccupation with imports, however, the Administration's enthusiasm for the anti-dumping law represents its most significant commitment. To understand why, it is necessary to examine the peculiarities of the dumping statute.

Normally, dumping occurs when a country sells a product more cheaply abroad than at home. Suppose, for example, that a shoe firm sells a pair of shoes in its home country for $10, but sells the same pair for only $6 (after adjustment for transportation) abroad. That would be a clear case of dumping, and, under the

The Shape of the Steel Industry

	1971	1972	1973	1974	1975	1976
Production						
Raw steel production, U.S. (millions of metric tons)	120.4	133.2	150.8	145.7	116.6	128.0
Shipments						
Finished steel shipments (millions of net tons)	87.0	91.8	111.4	109.5	80.0	89.4
Shipments to Major Markets (millions of net tons)						
Automotive	17.5	18.2	23.2	18.9	15.2	21.4
Construction and contractors' products	13.6	13.6	17.2	17.6	12.0	12.0
Containers and packaging	7.2	6.6	7.8	8.2	6.1	6.9
Industrial and electrical machinery and equipment	7.5	8.2	9.7	9.7	7.3	7.9
Employment						
Average number of employees (thousands)	487	478	509	512	457	454
Annual wages and salaries (billions)	$5.2	$5.8	$6.8	$7.9	$7.4	$8.3
Employment costs per hour worked	$6.26	$7.08	$7.68	$9.08	$10.59	$11.74
Financial						
Net assets (billions)	$ 20.0	$ 20.5	$ 21.2	$ 22.8	$ 25.1	$ 27.5
Total revenue (billions)	$ 20.4	$ 22.6	$ 28.9	$ 38.2	$ 33.7	$ 36.5
Net income (millions)	$562	$775	$1,272	$2,475	$1,595	$1,329
Capital expenditures (billions)	$ 1.4	$ 1.2	$ 1.4	$ 2.1	$ 3.2	$ 3.3
Total dividends paid (millions)	$390.0	$402.0	$433.0	$674.0	$658.0	$631.0
Profit per dollar revenue (cents)	2.8¢	3.4¢	4.4¢	6.5¢	4.7¢	3.6¢
Per cent return on stockholders' equity	4.3%	5.8%	9.3%	17.1%	9.8%	7.7%
Pollution Control Expenditures						
Water quality (millions)	$ 73.4	$ 57.0	$ 34.7	$106.9	$131.8	$158.7
Air quality (millions)	$ 88.2	$144.8	$ 65.4	$160.3	$321.3	$330.5
Foreign Trade						
Imports, all products (millions of net tons)	18.3	17.7	15.1	16.0	12.0	14.3
Dollar value (billions)	$ 2.6	$ 2.8	$ 2.8	$ 5.1	$ 4.1	$ 4.0
Exports, all products (millions of net tons)	2.8	2.9	4.1	5.8	3.0	2.7
Dollar value (billions)	$ 0.6	$ 0.6	$ 1.0	$ 2.1	$ 1.9	$ 1.3

SOURCE: American Iron and Steel Institute

rules of the GATT, the importing nation would be entitled to impose a $4 anti-dumping duty on the pair of shoes. The theory is that a country may have a relatively captive home market and could use profits from domestic sales to undercut foreign competitors. This would be considered unfair competition.

But the United States has gone a step further, and, in the opinion of Japan, a step beyond what is allowed by the GATT. The 1974 Trade Act says that if the exporting country is selling the exported item at below full costs in both the home and export market, Treasury is to disregard the standard dumping test—comparison of export and home prices—and rely instead on the so-called constructed value. This is an estimated cost, including an 8 per cent profit margin.

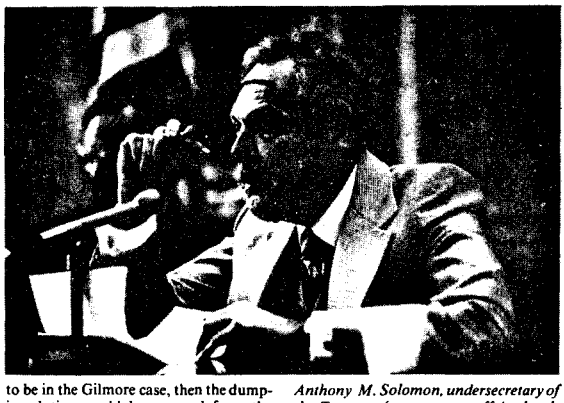
This second approach imposes a much tougher standard on importers, which—if accepted by Treasury—results in much higher dumping duties. And that is what the steel industry now expects.

The expectations stem from Treasury's favorable decision early this month on a dumping petition filed by the Gilmore Steel Corp., alleging the dumping of Japanese carbon steel plate steel in the United States. Treasury accepted Gilmore's allegation that the Japanese were selling the plates at below cost in Japan, and, consequently, resorted to a constructed value in determining the dumping duty, which averages about 32 per cent.

The 32 per cent measures the difference between the selling price in the United States and the constructed value—including the 8 per cent profit margin—of Japan's costs. As a practical matter, U.S. steelmakers say, Japanese firms have been discounting prices up to 20 per cent below the prevailing prices of U.S. companies. In 1976, plate imports from Japan totaled $174 million.

Now, U.S. Steel Corp. has filed an anti-dumping petition against most of the remaining Japanese imports, requesting dumping duties ranging from 26 per cent to 47 per cent.

Processing of these complaints may take from nine months to a year, though the initial—and most important—decision could be made within six months. Treasury has six months to reach the initial decision, but can extend that to nine months. If Treasury makes a tentative finding of dumping (such as it has already announced in the Gilmore case), it still has another three months for a final decision. Then the case is sent to the Internation Trade Commission, which determines whether or not the industry has been "injured"—or faces a threat of injury—from the imports. If both these findings are positive, as they are expected to be in the Gilmore case, then the dumping duties would be assessed from the time of the initial, tentative decision. However, during the period between the tentative and final decision, bonds must be posted on imports to assure that the duties will be paid. In turn, that requirement could depress imports.



Anthony M. Solomon, undersecretary of the Treasury for monetary affairs, heads an interagency group that is looking at ways to help the steel industry.

PRICING

That's the law—at least the U.S. law. Japan is likely to contend to the GATT that the constructed value calculations conflict with the international dumping code and that the United States must adhere to the traditional dumping definition, the comparison of export prices and domestic prices.

Whatever the law, the economics of dumping are another matter entirely. For there is no basic disagreement among steel analysts that Japanese production costs are significantly lower than American. For example, the Council on Wage and Price Stability recently estimated the average cost of a ton of Japanese steel at $267. U.S. Steel—in its dumping petition—estimated the cost at $270. Against that, the council put the average American cost at $328, a difference of slightly more than $60. Transportation costs and normal customs duties average $50 to $60, making the Japanese competitive at full cost. The charge is that they are selling at less than full cost.

The council attributed most of the Japanese price advantage to lower labor costs. In 1976, for example, U.S. labor costs were $12.22 an hour against Japan's $6.31 an hour, while U.S. worker productivity—output per hour—was only slightly better, according to the council.

The most obvious way that the use of the constructed value inflates importers' costs is the application of the 8 per cent profit margin. This is simply an 8 per cent margin exceeding the importer's full costs of production that is added on before dumping duties are calculated. For steel—and many other low-profit industries—that's high. Most major U.S. steel firms are not making anything near 8 per cent. Consequently, if their prices were subjected to the constructed value test, they also would be found too low.

A more basic problem involves the requirement that exporters cover their full cost of production. That would include all fixed costs (such as permanent overhead and the repayment of loans) and variable costs (such as material and energy expenses). Most economists argue that, during periods of slack demand, prices tend to be driven toward variable costs. A firm is better off selling slightly above its variable costs than not selling at all, but, in effect, this competitive pricing is prohibited by the constructed value measure.

(A simple example makes clear why companies are sometimes better off selling at a loss as long as they cover variable costs. Suppose a firm's fixed costs are $4, variable costs are $6, and the normal sales price is $11. If the firm sells the product for $9, it will show a $1 loss. If it doesn't sell at all, it will show a $4 loss.)

The distinction is important in the steel industry. American firms have traditionally attempted to cover their full costs of production, while European and Japanese firms have allowed prices to fluctuate according to demand—down when demand is slack, up when it's high. Thus, applying the constructed value formula again has the practical effect of

limiting price competition from abroad.

In the case of the Japanese steelmakers, there is one final upward bias in the constructed value exercise: the Japanese. Claiming that the cost information requested by the U.S. government represented confidential private data, the Japanese steel firms refused to supply it. That not only prevented them from refuting the charges that their domestic prices are below costs, but, as a practical matter, meant that Treasury relied heavily on the cost calculations of Gilmore in determining the constructed value. Logically, the U.S. company estimates are not likely to favor the Japanese.

Compounding all this is the sheer technical complexity of determining actual Japanese cost data for specific steel products. Indeed, in its report, the Council on Wage and Price Stability hinted that the available data simply weren't sufficiently detailed to permit accurate product-by-product estimates.

None of this means that the Japanese aren't selling at or below their full costs at both home and abroad (though it is unlikely they are selling below variable costs). As one official put it, there are numerous instances "of deep, deep discounting which are dumping by any definition, and something ought to be done." But the same official worries that the extra cushion provided by the constructed-value dumping calculation would create an umbrella for price increases by domestic steelmakers.

And, whatever the impact of the constructed value measure on the Japanese, it is likely to hit the Europeans harder, because their production costs are far higher. Indeed, the wage-price council's report indicated that basic production costs for steel in Europe—raw materials, labor and energy—are only about $10 a ton less than in the United States, indicating that the transportation expenses of $30 to $40 probably more than offset the difference. Under the constructed value test, this amounts to almost conclusive evidence of dumping.

UNCERTAINTY

Against that background, it is hard to know what is in store for either the Administration or the steel industry. One major issue facing the Solomon task force involves how much the government should promote investment in an industry where there is obvious worldwide over-investment. Stimulating that investment may not be an alternative to import restrictions—and, in fact, might conceivably result in more pressures in future years. For, with the high cost of new construction, modernization projects don't necessarily create enough operating savings to offset these higher capital costs, according to the wage-price council's estimates. If the world steel industry remains in substantial surplus, the government might ultimately be put in the position of being asked to protect investments it had originally encouraged.

A second major unknown involves the reaction of the Europeans and Japanese to the vigorous use of the anti-dumping laws. In the wake of the White House meeting, steel executives were almost uniformly euphoric about the preferability of anti-dumping protection to quotas, which, as Bethlehem chairman Lewis W. Foy said, "would take months of complicated negotiations . . . and even longer to put into effect." But if the Europeans and the Japanese vigorously fight the dumping charges in the GATT—and win—the triumph may be short-lived.

Finally, it seems obvious but necessary to say that the American steel industry is probably not on the verge of a renaissance. Throughout most of the postwar period, total production has grown less than 2 per cent annually, and there does not seem much prospect of doing better. Chances are the industry will do worse. Some traditionally strong markets may be shrinking. Automobiles are getting smaller and using less steel, and over-all slower economic growth may mean less demand for capital goods.

At the same time, neither is the industry on the edge of oblivion. According to the wage-price council's report, a large part of the U.S. industry remains competitive with imports. Older, high-cost plants may be vulnerable, and U.S. firms may lose sales in coastal markets. But the report indicates that the American industry remains highly competitive in the Midwest, where most new plants have been built and where industrial steel demand is highest.

The employment picture is similarly ambiguous. Most new plant construction in the last 20 years has involved replacement and modernization. This has meant a gradual decline in industry employment as modern equipment has reduced manning requirements. Between 1957 and 1976, the industry's employment dropped from 623,000 to 454,000. Ironically, the more the industry modernizes, the fewer jobs it may create.

None of this is of much concern to Carter. For him, steel is basically a nuisance. He ignored it as long as he could and—finally forced to pay attention—quickly found a way of quieting protectionist demands. His anti-dumping strategy may be a stroke of genius—or a shortsighted stopgap. Time will tell. □

Steel Production Capacity

(millions of raw metric tons)

	1976 (actual)	1980 (projected)
Total	595.0	686.0*
Major Developed Countries	466.4	524.0
United States	147.0	168.0
Japan	140.0	165.0
West Germany	63.3	65.0
France	35.5	37.0
Italy	34.1	36.0
United Kingdom	30.0	34.0
Canada	16.5	19.0
Other Developed Countries	85.0	91.0
Belgium	18.6	20.5
Spain	13.5	15.0
Sweden	8.0	8.2
Australia	9.4	10.3
Other	35.5	37.0
Less Developed Countries	43.6	71.0
Brazil	11.2	18.0
Mexico	7.1	12.0
India	10.2	16.0
South Korea	2.8	5.0
Other	12.3	20.0

*CIA predicts further cutbacks will reduce this to 638 million metric tons.
SOURCE: Central Intelligence Agency

APPENDIX

ANTIDUMPING BRIEFING MATERIALS

BACKGROUND

In recent weeks, public attention has been focused on the Antidumping Act of 1921, as amended, as a means of protecting U.S. industry, labor, and consumers from dumping of foreign goods on the U.S. market. In an effort to ensure that the Antidumping statute provides an effective remedy for this form of unfair trade practice, the Subcommittee on Trade announced hearings looking into the adequacy of the present statute as well as the effectiveness of the administration of the Act.

At the time of passage of the Trade Act of 1974, Treasury was administering 63 dumping findings (a dumping finding is a determination of both sales at less than fair value and injury resulting therefrom), 5 of which have since been revoked. Since that time, 8 additional dumping findings have been issued. Thus, Treasury is currently administering 66 dumping findings. Furthermore, since passage of the Trade Act, 53 petitions have been filed with Treasury alleging sales of imports at less than fair value. Of these, 23 have been filed within the last year. (See Appendix A for a list of these cases and their current status.)

The Treasury Department is apparently experiencing serious difficulty in liquidating entries (the assessment and collections of all duties payable upon importation) of imports subject to dumping findings. As part I of Appendix A indicates, in the majority of cases in which dumping findings have been made, entries have not been liquidated for more than two years.

Treasury's inability to efficiently administer the antidumping program may be due in part to inadequate staffing. According to figures received from the Budget and Planning Division of the Customs Service, 35 professional positions have been allocated to the technical branch of Customs which is responsible for administering the antidumping law, but only 24 slots are currently filled. However, the Subcommittee has received information indicating that at the present time there are only 13 professionals in the Technical Branch of Customs responsible for administering the antidumping law. (See Appendix B.)

The following summary of the procedures provided for in the Antidumping Act traces every step from the filing of a petition with the Commissioner of Customs to a final disposition of the case. In addition, it describe the procedures Treasury follows in administering a dumping finding.

ANTIDUMPING PETITION PROCEDURE

Petition

An antidumping case is initiated when a petition is filed with the Commissioner of Customs (Commissioner) by either a Customs district director or a third party which alleges that merchandise is or is likely to be sold in the United States or elsewhere at less than fair value and that an industry is or is likely to be injured, or is prevented from being established (actual, potential injury or prevention hereinafter referred to as "injury"), by reason of the importation of such merchandise. The entire procedure is outlined in Appendix C. Regulations prescribe the detailed information required in the petition and, upon request, confidentiality of the petitioner and of the specific data contained in the petition can be granted.

Summary investigation

Within 30 days of the filing, the Commissioner conducts a summary investigation to determine if erroneous information was submitted, if imported quantities are insignificant or if for other reasons an investigation is not warranted.

99-627—77——12

The case is closed and the petitioner notified if the Commissioner determines an investigation is not warranted. If the Secretary of the Treasury (Secretary) determines an investigation is warranted or has requested a preliminary injury determination from the United States International Trade Commission (ITC), the Secretary, within 30 days of the petition, publishes an "Antidumping Proceeding Notice" which contains a summary of the information received and that there is sufficient evidence concerning injury or that a preliminary injury inquiry has been requested from the ITC.

Preliminary injury inquiry

If there is substantial doubt of injury, the Secretary shall request a 30-day preliminary injury inquiry from the ITC. If the ITC advises the Secretary that there is no reasonable indication of injury, the Secretary terminates the investigation by publishing a "Notice of Termination of Investigation Based on No Likelihood of Injury." If the ITC determines there is a reasonable indication of injury, the Secretary proceeds with his investigation.

Full-scale investigation

After publication of the "Antidumping Proceeding Notice," the Commissioner has 6 months (9 months in more complicated cases) within which to conduct a full scale investigation to determine if there are sales at less than fair value. A sale at less than fair value occurs if the price of imports (purchase price in the case of an arm's length transaction or exporter's sales price in the case of a sale between related companies) is or is likely to be less than the price (after adjustments) at which such or similar merchandise is sold for consumption in the country of exportation. In cases where home market sales are inadequate, sales are made at less than cost of production or the merchandise is from a state-controlled-economy country, the Secretary is to consider sales in third markets or a constructed value, as applicable.

Customs officials have advised staff that the foreign producer selects what is similar merchandise sold in the home market for purposes of comparing prices. There is no independent verification of that selection. Customs officials have also advised that verification of sales figures together with permissible adjustments consists of the customs attaché at the U.S. Embassy checking the books that the foreign firm makes available. The Commissioner will ordinarily require the foreign manufacturer or exporter to submit pricing information covering a 180-day period (120 days prior to and 60 days after the first day of the month the initial petition was filed). Written submissions can be made by interested parties or the Secretary can request oral or written statements. If an adequate investigation is not permitted or necessary information is withheld, the Secretary is to reach a determination on the basis of such information as is available to him.

If the Secretary's determination is negative, he publishes a "Notice of Tentative Determination of Sales at Not Less Than Fair Value." If the Secretary's determination is affirmative, he will publish a "Withholding of Appraisement Notice" which suspends the appraisement as to merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date. Although the statute permits the withholding to be effective from 120 days prior to the publication of the "Antidumping Proceeding Notice" (approximately 10 months prior to the withholding notice in a normal case), regulations indicate that the normal effective period is 3 months prospectively (6 months prospectively if approved after request) unless the Secretary specifies a retroactive withholding.

After publication of either notice, interested parties can present their views to the Secretary, who, within 3 months of publication, must reach a final determination and publish either a "Determination of Sales at Less Than Fair Value" or a "Determination of Sales at Not Less Than Fair Value."

ITC injury investigation

If the Secretary makes a determination of sales at less than fair value, he advises the ITC which has 3 months within which to hold public hearings, receive written statements and determine injury.

If, after referral to the ITC but prior to its determination, the Secretary is persuaded from information submitted or arguments received that his determination of sales at less than fair value was in error, he can publish a notice of "Revocation of Determination of Sales at Less Than Fair Value and Determination of Sales at Not Less Than Fair Value," which will state the merchandise involved and the reasons therefor. The Secretary is to notify the ITC of his action.

Dumping finding

When it makes an injury determination, the ITC advises the Secretary of its determination and publishes a summary thereof. A negative determination terminates the investigation while an affirmative determination causes the Secretary to publish a "Dumping Finding" and begin the appraisement of entries suspended under the "Withholding of Appraisement Notice."

Discontinuance and Termination of a Dumping Investigation

BASIS FOR DISCONTINUANCE

At anytime during the course of an antidumping investigation, the Secretary, if satisfied that (1) possible margins of dumping are minimal in relation to export volume, price revisions have been made which eliminate any likelihood of sales at less than fair value and assurances have been received which eliminate any likelihood of future sales at less than fair value; or (2) sales to United States have terminated, will not resume and assurances to this effect have been received; or (3) there are other circumstances on the basis of which it may no longer be appropriate to continue the investigation, the Secretary may discontinue the investigation.

DISCONTINUANCE

If the decision is reached prior to the publication of either the "Withholding of Appraisement Notice" or the "Notice of Tentative Negative Determination", the Secretary publishes a "Notice of Tentative Discontinuance of Antidumping Investigation." Within 3 months of publication of the notice during which time interested persons are given an opportunity to present their views, if the Secretary determines final discontinuance is warranted, he publishes a "Notice of Discontinuance of Antidumping Investigation."

If the decision is reached after publication of a "Withholding of Appraisement Notice" or the "Notice of Tentative Negative Determination," the Secretary can immediately publish a "Notice of Discontinuance of Antidumping Investigation" without a tentative notice and without an opportunity for interested persons to present their views.

PERIODIC REPORTS

When an investigation has been discontinued by the Secretary on the basis of price assurances, reports by foreign exporters are to be made to the Commissioner for such time and at such intervals as the Secretary determines.

REOPENED INVESTIGATIONS

If, subsequent to the discontinuance, the Secretary determines that there are reasonable grounds to believe or suspect that there are or are likely to be sales at less than fair value he can reopen the investigation by publishing a "Withholding of Appraisement Notice."

TERMINATION

The Secretary may, upon his own initiative or upon request, consider terminating a discontinued investigation by publishing a "Notice of Tentative Termination of Antidumping Investigation." Regulations indicate that generally a 2 year period must elapse before the Secretary may decide to terminate but that a shorter or longer period may be appropriate. After interested persons have had an opportunity to present their views, the Secretary determines whether final termination is warranted and, if so, publishes a "Notice of Termination of Antidumping Investigation" or publishes a notice setting forth the reasons why termination is not warranted.

RE-ENTRY TO U.S. MARKET

Firms which have been the subject of a final discontinuance based upon assurances of termination of sales to the United States can, after sales have been terminated for a significant time (ordinarily 2 years), petition the Secretary for permission to re-enter the market. Such firms must provide assurances that there will be no sales at less than fair value; may be required to submit periodic reports to the Secretary; and may be subject in the future, if warranted, to a reopened dumping investigation.

ADMINISTRATION OF A DUMPING FINDING

After publication of a dumping finding in the Federal Register, dumping duties are assessed, as required by law, on an entry-by-entry basis using price comparisons on the date of purchase (non-related party transactions) or on the date of export (related party transactions), rather than comparisons made during the fair value investigation. This procedure requires that all foreign exporters furnish domestic and export pricing information including all documentations concerning factors such as discounts, advertising, warranties, distribution costs, etc. which are price-related. This information must then be verified by the U.S. Customs Representative in the exporting country. The Customs Service does not independently verify this pricing information; it only verifies that the information submitted by the foreign manufacturer corresponds to entries in the manufacturer's records. Based upon this information, Customs prepares and disseminates to all ports "master lists" containing data necessary for appraisement, and collection of dumping duties where applicable.

Pricing information must be revised continually to comply with the requirement that dumping duties be assessed on the basis of present price comparisons. However, neither the statute nor the regulations indicate that pricing information is not updated on a regular basis; rather the time frame varies from case to case and frequently may occur only once a year. The procedure followed in revising price information is the same as that following publication of a dumping finding: questionnaires are again sent to the exporters and a Customs representative verifies the information following the method outlined above. The information obtained is used not only for appraisement purposes, but also enables Customs to determine whether dumping margins (and the corresponding bond requirement) require revision.

Treasury has been seriously deficient in meeting its responsibility to appraise entries subject to a dumping finding on a timely basis and to assess dumping duties where applicable. In the most blatant case, entries have not been liquidated since December, 1970. Delays in liquidation may result from a number of factors: (1) refusal of the exporter to submit pricing information, (2) untimely and/or incomplete submissions of information, (3) refusal or delays on the part of the exporter in permitting verification of submissions, (4) submission of voluminous data requesting price adjustments for factors such as warranties, advertising, distribution costs, etc., and (5) inadequate staff to analyze and evaluate the information received.

Although the Trade Act of 1974 amended the Antidumping Act of 1921 by providing strict time limits within which a finding of dumping must be made, it imposed no such constraints on the subsequent administration of a finding. The Trade Act further amended the antidumping statute by requiring the Secretary of the Treasury, whenever he has reason to believe that the product is sold in the home market at less than its cost of production, to use a constructed value rather than the foreign market value as a basis for determining dumping margins. Exporters are sometimes reluctant to provide Treasury with cost of production data; they fear their competitors will obtain access to it. Furthermore, neither the statute nor the regulations define with any specificity the elements to be considered in determining cost of production or constructed value. This leads to further delays in appraisement.

The Antidumping Act is remedial, not punitive, in nature. Although large dumping margins may be found to exist as a result of the fair value investigation, ultimately dumping duties may not be assessed because exporters are likely to lower their home market price or raise their export price in response to a withholding of appraisement notice. However, delays in liquidation of entries caused by Treasury's inability to administer the antidumping statute in a timely fashion may delay the assessment and collection of normal entry duties

MODIFICATION OR REVOCATION OF DUMPING FINDING

A dumping finding can be modified or revoked either by an application to the Commissioner based upon no sales at less than fair value for a substantial time, generally 2 years, and assurances that there will be no future sales at less than fair value or at the Secretary's initiative if the dumping finding has been in existence for 4 years and the Secretary is satisfied that sales at less than fair value will not resume. After the Secretary publishes a "Notice of Tentative Determination to Modify or Revoke Dumping Finding" which results in a suspension of appraisement of merchandise pending a final determination, interested persons will be given an opportunity to present views. If the Secretary determines that a modification or termination is warranted, he publishes a "Notice of Modification or Revocation of Dumping Finding" but if he determines otherwise, he publishes a notice to that effect with the reasons therefor.

APPENDIX A

CASES IN WHICH DUMPING PETITIONS WERE FILED ON OR AFTER JAN. 3, 1975, AND DUMPING FINDINGS WERE PENDING AS OF JAN. 3, 1975

1. CASES IN WHICH DUMPING FINDING HAS BEEN PUBLISHED

Commodity	Country	Date of dumping finding	Entries liquidated through [1]
Portland cement, other than white, nonstaining portland cement.	Sweden	Apr. 14, 1961	September 1973.
	Belgium	July 12, 1961	
Portland gray cement	Portugal	Oct. 31, 1961	
Portland cement, other than white, nonstaining portland cement.	Dominican Republic	Apr. 30, 1963	
Steel reinforcing bars	Canada	Apr. 14, 1964	December 1970.
Carbon steel bars and structural shapes	do	Sept. 17, 1966	November 1972.
Steel jacks	do	Sept. 11, 1966	December 1976.
Titanium sponge	U.S.S.R.	Aug. 21, 1968	February 1977.
Pig iron	U.S.S.R.	Oct. 18, 1968	
	Czechoslovakia	do	
	East Germany	do	
	Romania	do	
Potassium chloride, otherwise known as muriate of potash	Canada	Dec. 19, 1969	December 1973.
Aminoacetic acid (glycine)	France	Mar. 18, 1970	
Steel bars, reinforcing bars, and shapes	Australia	Mar. 21, 1970	[2].
Whole dried eggs	Holland	Sept. 11, 1970	
Tuners (of the type used in consumer electronic products)	Japan	Dec. 12, 1970	December 1974.
Television receiving sets, monochrome and color	do	Mar. 8, 1971	April 1972.
Ferrite cores	do	Mar. 11, 1971	December 1974.
Ceramic wall tile	United Kingdom	May 6, 1971	September 1973.
Clear plate and float glass	Japan	May 7, 1971	June 1973.
Clear sheet glass	do	May 1, 1971	Do.
Pig iron	West Germany	July 16, 1971	December 1972.
Do	Canada	July 24, 1971	April 1977.
Do	Finland	July 16, 1971	
Clear sheet glass	France	Dec. 2, 1971	
Do	Italy	do	December 1973.
Do	West Germany	do	
Ice cream sandwich wafers	Canada	Feb. 25, 1972	December 1976.
Diamond tips for phonograph needles	United Kingdom	Apr. 1, 1972	December 1973.
Fish netting of man-made fibers	Japan	June 1, 1972	July 1972.
Large power transformers	France	June 5, 1972	
	Italy	June 14, 1972	December 1973.
	Japan	June 5, 1972	
	Switzerland	June 14, 1972	Do.
Do	United Kingdom	do	
Asbestos cement peipe	Japan	June 26, 1972	
Elemental sulfur	Mexico	June 28, 1972	December 1972.
Cadmium	Japan	July 27, 1972	[2].
Instant potato granules	Canada	Sept. 25, 1972	June 1976.
Drycleaning machinery	West Germany	Nov. 2, 1972	June 1974.
Bicycle speedometers	Japan	Nov. 17, 1972	December 1973.
Canned bartlett pears	Australia	Mar. 21, 1973	[2].
Roller chain, other than bicycle	Japan	Apr. 12, 1973	July 1973.
Stainless steel plate, except shipments	Sweden	June 5, 1973	December 1973.
Synthetic methionine	Japan	Jan. 10, 1973	June 1973.
Printed vinly film	Brazil	Aug. 21, 1973	[2].
	Argentina	do	September 1974.
Stainless steel wire rods	Japan	Aug. 24, 1973	
Steel wire rope	do	Oct. 11, 1973	December 1974.
Polychloroprene rubber	do	Dec. 6, 1973	June 1976.
Elemental sulfur	Canada	Dec. 12, 1973	October 1974.
Expanded metal, of base metal	Japan	Jan. 8, 1974	December 1974.
Calcium pantothenate	do	Jan. 14, 1974	June 1976.
Racing plates	Canada	Feb. 22, 1974	January, 1975.
Picker sticks	Mexico	June 6, 1974	
Electric golf cars	Poland	June 16, 1975	July 1975.
Birch 3-ply doorskins	Japan	Feb. 18, 1976	November 1975.
Water circulatiing pumps, wet motor type	United Kingdom	July 7, 1976	
Tapered roller bearings	Japan	Aug. 17, 1976	
Acrylic sheet	do	Aug. 30, 1976	June 1976.
Melamine in crystal form	do	Feb. 2, 1977	
Aboveground metal swimming pools	do	Sep. 7, 1977	
Pressure sensitive plastic tape	Italy	Oct. 21, 1977	
Parts for self-propelled bituminous equipment	Canada	Sep. 7, 1977	

[1] This reflects the most recent date for which Customs has developed the data needed to appraise entries and assess dumping duties. However, this does not indicate that in every case all entries to that date have been liquidated or that dumping duties have been collected.

[2] No shipments to United States.

FINDINGS REVOKED SINCE JAN. 3, 1975

Commodity	Country	Date of dumping finding	Date of revocation
Potassium chloride	West Germany	Dec. 19, 1969	Mar. 21, 1975
Do	France	Jan. 17, 1969	Jan. 20, 1976
Primary lead metal	Australia	Apr. 17, 1974	May 7, 1976
Do	Canada	do	Do.
Cast iron soil pipe	Poland	Oct. 24, 1967	July 27, 1977

II. CASES TERMINATED BY ITC DETERMINATION OF NO LIKELIHOOD OF INJURY

Commodity	Country	Date filed	Final action date
Methyl alcohol	Brazil	Aug. 11, 1977	Oct. 13, 1977

III. CASES TERMINATED BY A NSLTFV DETERMINATION

Chicken eggs in the shell	Canada	June 11, 1974	Apr. 15, 1975
Radial ball bearings	Japan	Nov. 20, 1974	June 23, 1975
Sealed rechargeable nickel cadmium batteries	do	Dec. 24, 1974	Oct. 24, 1975
AC Adapters	do	Sept. 19, 1975	July 13, 1976
Solid industrial vehicle tires	Canada	Nov. 13, 1975	Aug. 18, 1976
Digital computer scales	Japan	Feb. 9, 1976	Jan. 6, 1977

IV. CASES TERMINATED BY AN ITC NO INJURY DETERMINATION AFTER A SLTFV DETERMINATION

Portable electric typewriters	Japan	Feb. 14, 1974	June 20, 1975
Welt work shoes	Romania	Feb. 18, 1974	June 13, 1975
Lock-in amplifiers	United Kingdom	Apr. 17, 1974	July 2, 1975
Nonpowered mechanics' tools	Japan	Aug. 5, 1974	Dec. 3, 1975
Vinyl clad fence fabric	Canada	Sept. 27, 1974	Oct. 29, 1975
Butadiene acrylonitrile rubber	Japan	Feb. 26, 1975	Mar. 29, 1976
Polymethyl methacrylate polymers	do	May 16, 1975	June 25, 1976
Ski bindings and parts thereof	West Germany	June 24, 1975	Sept. 2, 1976
Do	Austria	do	Do.
Do	Switzerland	do	Do.
Bricks	Canada	do	July 30, 1976
Knitting machines for ladies seamless hosiery	Italy	July 15, 1975	Nov. 27, 1976
Tantalum electrolytic fixed capacitors	Italy	Sept. 28, 1975	Oct. 22, 1976
Cement	Mexico	Oct. 20, 1975	Dec. 1, 1976
Clear sheet glass	Romania	Mar. 9, 1976	Apr. 7, 1977

V. CASES DISCONTINUED OR TERMINATED

Water circulating pumps	Sweden	Feb. 25, 1975	Jan. 5, 1976
Automobiles	Japan	July 8, 1975	Aug. 18, 1976
Do	Belgium	do	Do.
Do	West Germany	do	Do.
Do	United Kingdom	do	Do.
Do	Italy	do	Do.
Do	France	do	Do.
Do	Sweden	do	Do.
Do	Canada	do	Do.
Automobile body dies	Japan	Jan. 21, 1976	Dec. 6, 1976
Multimetal lithographic plates [1]	Mexico	Mar. 24, 1976	May 27, 1976

[1] Case terminated. All other cases were discontinued.

VI. CASES PENDING

Commodity	Country	Date filed	Latest action and date
Railway track maintenance equipment	Austria	Oct. 1, 1976	SLFV, Aug. 16, 1977.
Saccharin	Japan	Oct. 20, 1976	SLFV, Sept. 13, 1977.
Do	Korea	do	Do.
Animal glue and inedible gelatin	West Germany	Dec. 23, 1976	SLFV, Aug. 3, 1977.
Do	Sweden	do	Do.
Do	Netherlands	do	Do.
Do	Yugosalvia	do	Do.
Impression fabric of man-made fibers	Japan	Feb. 7, 1977	Appraisement withheld, Sept. 22, 1977.
Polyvinyl chloride sheet and film	Taiwan	Feb. 24, 1977	Appraisement withheld, Oct. 19, 1977.
Ice hockey sticks	Finland	Mar. 2, 1977	Appraisement withheld, Sept. 22, 1977.
Welded stainless steel pipe and tubing	Japan	do	Extension to Jan. 6, 1978, for tentative action.
Carbon steel plate	do	Mar. 8, 1977	Appraisement withheld, Oct. 6, 1977.
Rayon staple fiber	Austria	Mar. 3, 1977	Appraisement withheld Oct. 19, 1977.
Motorcycles	Japan	June 8, 1977	Antidumping proceeding notice July 15, 1977.
Rayon staple fiber	Belgium	June 17, 1977	Antidumping proceeding notice July 22, 1977.
Sorbic acid and potassium sorbate	Japan	July 18, 1977	Antidumping proceeding notcie Aug. 23, 1977.
Portland hydraulic cement	Canada	Aug. 2, 1977	Antidumping proceeding notice, Sept. 8 1977.
Carbon steel wire rod not tempered not treated, and not partly manufactured.	France	Sept. 12, 1977	Antidumping proceeding notice Oct. 19, 1977.
Steel welded standard pipe	Japan	Sept. 20, 1977	Antidumping proceeding notice, Oct. 25, 1977.
Steel structural shapes	do	do	Do.
Steel sheets, hot-rolled, cold-rolled and galvanized.	do	do	Do.
Steel plates, other than not pickled, not cold-rolled and not in coils.	do	do	Do.

APPENDIX B

CHANGES IN TREASURY STAFF SIZE FOR HANDLING ANTIDUMPING AND COUNTERVAILING DUTY PROCEDURES

Year	Positions requested for appropriation	Treasury staff (tariff affairs)	Customs staff[1] (technical branch)
1971	38 for Customs in supplemental appropriation.	5 professional and 1 attorney	22 professional.
1972	2 for tariff and trade affairs	8 professional and 1 attorney	52 professional.
1973	No request	10 professional and 1 attorney	51 professional.
1974	6 for tariff and trade affairs	do	30 professional.
1975	No request	10 professional and 2 attorneys	28 professional.
1976	do	do	26 professional.
1977:			
January	2 for tariff and trade affairs	12 professional (7 filled as of August).	20 professional.
October			35 professional (24 filled).

[1] As of January.

APPENDIX C

Time Outline of Antidumping Investigation

Action and Time

Petition filed.

Customs' preliminary Investigation: 30 days.

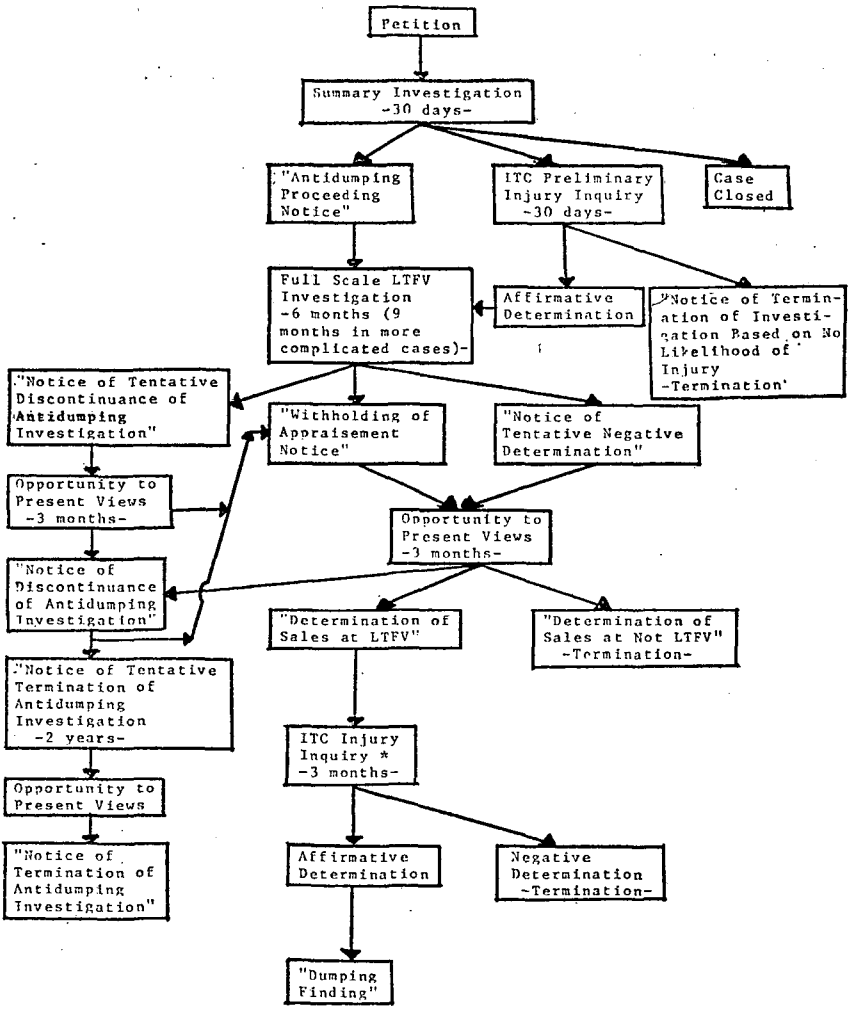
Customs' full-scale investigation: 6 months or 9 months in more complicated cases.

Secretary's Final LTFV Determination: 3 months.

ITC's Injury investigation and determination: 3 months.

Final disposition of case.

APPENDIX C.—Detailed outline of antidumping investigation



*After a determination of sales at LTFV but prior to an ITC determination, the Secretary can terminate an investigation by issuing a notice, "Revocation of Determination of Sales at LTFV and Determination of Sales at NLTFV", or he can modify his carrier determination of sales at LTFV by issuing a notice, "Modification of Determination of Sales at LTFV".

EXCHANGE OF LETTERS

COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON TRADE,
Washington, D.C., April 6, 1977.

Hon. MICHAEL BLUMENTHAL,
Secretary of the Treasury,
Washington, D.C.

DEAR MR. SECRETARY: As Chairman of the Subcommittee on Trade of the Committee on Ways and Means, I refer to the recent United States International

Trade Commission (ITC) report to the President, following the completion of its investigation No. TA–201–19, that television receivers are being imported into the United States in such increased quantities as to be a substantial cause of serious injury or the threat thereof to a domestic industry. The President shall shortly be acting upon that report.

The ITC report did refer to a Treasury Department dumping finding in 1971 concerning television receivers from Japan. The report stated that since the first quarter of 1973, the U.S. Customs Service has not levied any dumping duties on television receivers from Japan, pursuant to that 1971 finding. I would appreciate receiving information for each year or part thereof since Treasury's 1971 finding as to the number of Japanese television receivers dumped in the United States, the appraisal and amount of dumping duties levied, separated by manufacturer or importer, and the reasons why the U.S. Customs Service has not levied any dumping duties since the first quarter of 1973 on television receivers from Japan.

Sincerely yours,

CHARLES A. VANIK, *Chairman.*

DEPARTMENT OF THE TREASURY,
Washington, D.C., April 18, 1977.

HON. CHARLES A. VANIK,
Chairman, Subcommittee on Trade, Committee on Ways and Means, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The Secretary has asked me to acknowledge receipt of your April 6 letter concerning the dumping of television receivers from Japan and requesting statistical information for each year since the Treasury reported its findings on this matter in 1971.

You will have a further response as soon as possible.

Sincerely yours,

GENE E. GODLEY,
Assistant Secretary
(Legislative Affairs).

COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON TRADE,
Washington, D.C., April 19, 1977.

HON. MICHAEL BLUMENTHAL,
Secretary of the Treasury,
Washington, D.C.

DEAR MR. SECRETARY: I refer to my letter to you of April 6, 1977 which requested statistical information concerning dumping duties on television receivers from Japan under a 1971 Treasury Department finding. The Wall Street Journal in a recent story stated that the Treasury Department has concluded that Japanese dumping of television receivers in the U.S. market has been more significant than thought and that the Treasury Department on April 17 raised from 9% to 20% of the value the entry bonds required to be posted.

I still await the information requested in my letter of April 6 and would appreciate your earliest reply.

Sincerely,

CHARLES A. VANIK, *Chairman.*

COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON TRADE,
Washington, June 3, 1977.

HON. MICHAEL BLUMENTHAL,
Secretary of the Treasury,
Washington, D.C.

DEAR MR. SECRETARY: I noted with interest the remarks made on May 17th by Treasury Under Secretary Bette Anderson before the American Importers Association, especially her remarks concerning expedited liquidation of entries and increased attention to enforcement of the antidumping and countervailing duty statutes.

As you may know, questions of trade involving television receivers from Japan are pending in a number of forums including the ITC, U.S. Court of Customs and Patent Appeals and the U.S. District Court in Philadelphia. On April 6, 1977,

approximately two months ago, I wrote to you requesting information concerning the Department of Treasury's enforcement of a 1971 dumping finding involving Japanese television receivers. To date I have not had a response to my letter, or any inquiry concerning it. I would appreciate a response to my letter as soon as possible. A copy of that letter is enclosed for your information.

Sincerely yours,

CHARLES A. VANIK, *Chairman.*

THE SECRETARY OF THE TREASURY,
Washington, D.C., June 16, 1977.

Hon. CHARLES A. VANIK,
Chairman, Subcommittee on Trade, Committee on Ways and Means, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Thank you for your letters of April 6 and 19, 1977, regarding the International Trade Commission (ITC) report to the President which refers to a Treasury Department dumping finding in 1971 on television receivers from Japan. The finding was published as T.D. 71-76.

Immediately following the publication of the finding of dumping in March 1971, the U.S. Customs Service began to collect, through the Customs Representative in Japan, foreign market and export data needed to appraise imports of Japanese televisions under the Antidumping Act. This procedure required all Japanese manufacturers and exporters of televisions to furnish their domestic and export market prices and to document fully factors such as discounts, advertising, distribution costs, warranty, credit and transportation costs related to these prices. Furthermore, in accordance with established practice, the entire submissions by the Japanese manufacturers had to be verified by the Customs Representative who was given access to the manufacturer's records.

Based upon the information collected, Customs prepared and disseminated the appropriate data to Customs officers for appraisement and collection of antidumping duties where applicable. Appraisement was completed on virtually all Japanese televisions entering during the period September 1970 through March 1972, and approximately $1,000,000 of dumping duties was collected.

A finding of dumping in itself does not guarantee the collection of special dumping duties. Exporters may either increase the price of their product to the United States or lower the prices in their own country and thus reduce or eliminate dumping duties which might otherwise be collected. In this case the information submitted by the Japanese exporters of television receivers indicates that the Japanese lowered the price of their product in Japan as a result of the dumping finding and thereby reduced their dumping duties.

With regard to your request for an explanation of why the Customs Service has not levied any antidumping duties on television receivers from Japan since the first quarter of 1973, it is my understanding that claims made by the Japanese manufacturers involve a considerable adjustment for differences in cost of production. The Customers Regulations (at 153.9) provide for an adjustment where manufacturing costs differ for the merchandise being compared. Due to complexities in cost of production figures and the reluctance of Japanese manufacturers to reveal actual production records, it took over 2 years to determine whether or not, and to what extent, a cost of production differential should be allowed. Once these determinations were made, additional information had to be requested from the manufacturers and verified, and until this was done Customs could not issue values to be used in the appraisement of television entries.

When early in 1977, we felt sufficient data was available to resume appraisements, we learned that the Japanese manufacturers may have been involved in a practice known as "double pricing," i.e. presenting Customs an invoice showing one price while the actual or true price was in fact lower. Such a practice effectively reduces or eliminates dumping duties. The matter of "double pricing" has been referred to Customs Office of Investigation which is conducting an investigation to determine the nature and impact of this duplicity.

In the interim Customs is taking certain steps to protect the revenue. On April 7, Customs field officers were instructed to suspend appraisement and liquidation of all entries covering Japanese televisions, and they were further instructed to require importers to post additional bonds amounting to 20 percent of the f.o.b. price in transactions involving non-related purchasers and 100 percent in transactions involving related parties.

Regarding your request for information relative to the number of Japanese televisions dumped in the United States since 1971, the appraised values and amount of dumping duties levied, separated by manufacturer or importer, I am advised by the Customs Service that the volume and complexity of the information you seek is overwhelming. I am further advised that a comprehensive study will have to be made of the available information, including the calculation and compilation of numerous statistics relating to foreign market value, purchase price, and exporter's sales price, as defined in the applicable sections of the Antidumping Act, 1921, as amended, to comply fully with your request.

As a matter of record, it should be noted that a full investigation was conducted with respect to televisions exported to the United States by the Sony Corporation, Japan. Subsequent to the dumping finding, we determined that this firm did not practice unfair pricing methods. It was, therefore, excluded from the dumping finding in February 1975.

In view of the above, I have referred your letter to the U.S. Customs Service, which has in its possession all of the related information developed since the inception of this case in 1968. This information, as well as any Customs personnel familiar with this matter, are readily available to you or members or your staff. The specific information you requested will be compiled by Customs and sent to you as soon as possible.

Sincerely yours,

W. MICHAEL BLUMENTHAL.

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, July 14, 1977.

HON. CHARLES A. VANIK,
Chairman, Committee on Ways and Means,
U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in further reference to your letters of April 6 and 19, 1977, to Secretary Blumenthal concerning the assessment of anitdumping duties on televisions imported from Japan pursuant to Treasury Decision 71–76.

Secretary Blumenthal responded to you by letter June 16, 1977, wherein he advised that the U.S. Customs Service would undertake to gather and forward to you the specific data requested by your letter.

Specifically, you requested data concerning the number of Japanese televisions imported into the United States since the date of the finding of dumping, together with the appraised values of such merchandise and the amount of dumping duties collected separated by manufacturer or importer.

In this regard, we have assembled all of the instructions issued by Customs Headquarters to its appraising officers. These instructions, commonly referred to as "master lists", reflect the appraised values under the Antidumping Act and show the Japanese manufacturer involved as well as specific models sold to United States importers. In addition, computer printouts covering the period September 1970 through June 1976, have been prepared which contain pertinent export information separated by importer.

Finally, based upon reports received from Customs field officers, we have determined the amount of dumping duties assessed on televisions from Japan since the date of withholding (September 4, 1970). This information reflects the names of manufacturers and importers, model numbers, dumping duties and the quantity of televisions subject to dumping duties.

As you were advised by Secretary Blumenthal, the information you have requested is voluminous and extremely complex in that a significant number of different models, values, and statistical data are involved. This being the case, we invite your suggestion regarding the forwarding of this information directly to your office. Alternatively, if you so desire and at your convenience, Customs personnel are available to discuss this entire matter with you or members of your staff.

Sincerely yours,

G. R. DICKERSON,
Acting Commissioner of Customs.

SUBCOMMITTEE ON TRADE,
COMMITTEE ON WAYS AND MEANS,
U.S. HOUSE OF REPRESENTATIVES,
Washington, D.C., May 23, 1977.

Hon. W. MICHAEL BLUMENTHAL,
Secretary of the Treasury, U.S. Treasury Building,
Washington, D.C.

DEAR MR. SECRETARY: As you know, there is considerable interest in the Congress on the economic impact of the "gas guzzler tax/efficient automobile rebate" proposals contained in the President's Energy Plan. In attempting to estimate changes in the volume of foreign auto imports and the pricing of such imports, it is important for the Ways and Means Subcommittee on Trade to have a better understanding of the present pricing and sales practices of foreign automobiles and other motor vehicles entering the American market.

Therefore, to assist in this matter, I request on behalf of the Subcommittee a complete report from your Department of any and all studies or investigations conducted in the last three years on automobile imports, particularly what efforts have been taken to follow up on pricing practices of foreign automobile exporters subsequent to the termination of the antidumping investigation of automobile imports by Secretary Simon last year.

In view of the timetable for consideration of the Energy Plan in the Ways and Means Committee, we would appreciate having this report at the earliest possible date.

Sincerely yours,

CHARLES A. VANIK, *Chairman.*

DEPARTMENT OF THE TREASURY,
DEPUTY ASSISTANT SECRETARY,
Washington, D.C., October 17,1977.

Hon. CHARLES A. VANIK,
Chairman, Subcommittee on Trade, Committee on Ways and Means, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The General Counsel, Mr. Mundheim, has asked me to respond to your letter of May 23, 1977, concerning the Treasury Department's investigations of imports of foreign automobiles, particularly in the wake of the antidumping proceedings initiated in 1975.

The Customs Service normally does yearly pricing surveys for normal appraisement purposes on importations of all foreign automobiles. The most recent completed investigation of pricing methods prior to the antidumping case was conducted by the Customs Service during 1975–76.

Initially, antidumping petitions were received on July 8 and July 11, 1975, filed by the United Auto Workers and Congressman John Dent, alleging that automobiles were being sold to the United States at less than fair value. The allegations were directed to exports of twenty-eight major automobile manufacturers to related U.S. companies. The investigation included exports by the Canadian subsidiaries of the four domestic U.S. producers.

On August 11, 1975, an "Antidumping Proceeding Notice" was published in the Federal Register. This action resulted in the initiation of formal investigations conducted by personnel of the U.S. Customs Service. In each case, onsite review of the exporter's records was made. After an extensive analysis of the information, it was determined that each of twenty-three exporters was, in fact, selling to and in the U.S. at prices which were less than that received for comparable models in its respective home market.

On May 4, 1976, the Secretary of the Treasury announced his preliminary intention to discontinue these investigations based on the special circumstances that existed in the European, Canadian and Japanese automobile industries during the investigative period. These circumstances included differences in safety and pollution equipment between the foreign and U.S. models, and the effects of floating exchange rates on the prices used to make price comparisons in the two markets.

When adjustments for these factors were made, the majority of the foreign manufacturers still found that a substantial percentage of their U.S. sales were at less than "fair value." These companies were, however, willing to agree in writing either to raise their prices to the U.S. or lower home market prices. In every instance, the manufacturers also agreed to submit price information on a

periodic basis to the U.S. Customs Service. Five manufacturers, Volkswagen, Ford (Germany), Volvo, Saab and Renault, were placed in a category which requires semiannual submissions to Customs of the latest prices in both markets.

On March 31, 1977, the above five exporters were sent questionnaires to complete for a representative period of the 1977 model year. Responses to these questionnaires have been received and are currently being analyzed. It is expected that some preliminary conclusions will be available in the near future. Further, Fiat, S.p.A. has been added to the list of firms required to make semiannual submissions. This decision has been taken in response to the extensive Fiat advertising campaign during the early part of 1977. Fiat is therefore being required to make two submissions for model year 1977.

The remaining exporters will be sent questionnaires in October to cover a representative portion of their 1977 model year, in addition to the above-mentioned firms receiving another request. Each of the responses will be subject to an extensive process of analysis and, possibly, verification in order to determine if the manufacturers have complied with their letters of assurance.

If, at the end of two years, an individual manufacturer shows substantial compliance with the agreement, the company may request that the Secretary issue a termination of the discontinued case. Of course, all interested parties would be given prior notice of this action in order to afford them an appropriate comment period.

If you or any members of your staff have additional questions or desire to review the records on any of these matters, personnel of my office and in the Customs Service stand ready to assist you at your convenience.

Sincerely,

PETER D. EHRENHAFT,
Deputy Assistant Secretary and Special Counsel,
Tariff Affairs.

COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON TRADE.
Washington, D.C., October 13, 1977.

Hon. W. MICHAEL BLUMENTHAL,
Secretary of the Treasury,
Washington, D.C.

DEAR MR. SECRETARY: The recent announcement of the Zenith Corporation of its plans to shift part of its television manufacturing operations to Taiwan and Mexico has emphasized the importance of vigorous enforcement of our trade laws. In this instance, neither a finding of dumping of television sets nor the import relief in the form of an orderly marketing agreement with Japan were sufficient to forestall a shift of productive facilities and jobs abroad. This is similarly true of other legal actions brought by the Zenith Corporation against unfair competitive practices, including an antitrust action, a section 337 case, and a countervailing duty case which is now subject to a petition for certiorari to the Supreme Court.

What continues to be disturbing is the moribund status of the 1971 finding of dumping of Japanese television sets. The Subcommittee on Trade has been in contact with the Department regarding this case. We understand that after the finding of dumping of Japanese television sets, the Treasury Department required an entry bond of 9 percent to cover potential dumping duties. After considerable delay, some import entries of Japanese television sets were liquidated and dumping duties assessed. It is our understanding, however, that import entries of television sets since 1973 have not been liquidated; no regular duties have been paid; and no dumping duties have been assessed. Earlier this year the Treasury Department raised the entry bond required to 20 percent, indicating a marked increase in dumping margins. Further, we were informed that the Treasury Department initiated an investigation of alleged widespread fraudulent invoice schemes designed to avoid payment of dumping duties by the importers. Meanwhile, as you are aware, imports of television sets from Japan have continued.

It is estimated that approximately $3 billion of Japanese television imports from 1973 to date await assessment of dumping duties and that no further assessment is planned until the fraud investigation is completed.

Foreign interests and importers continually maintain that the process of the withholding of liquidation of import entries during the antidumping process has

an inhibiting effect on imports since the importer cannot estimate what price he should charge for imported articles in the absence of knowledge of what potential dumping duties might be assessed. It is clear, in this case, the failure of the Treasury Department to establish appropriate dumping margins has had no such inhibiting effect. In fact, for most of the period since 1971, domestic television manufacturers have had to compete with imports of television sets subject to a dumping finding and on which no dumping duties have been assessed.

While it is not possible to estimate what effect the failure of the Treasury Department to assess dumping duties on Japanese television sets has placed on the recent decision by the Zenith Corporation, it appears to us that a burden of proof rests with the Treasury Department that its failure has resulted in a loss of domestic production facilities and jobs which should have never been lost.

We therefore request an immediate report on the reason why the assessment of dumping duties has not taken place and what steps the Treasury Department intends to take to correct this deplorable situation.

Further, during 1970 when the 91st Congress was considering H.R. 18970, the Proposed Trade Act of 1970, which would have imposed certain time constraints on the Treasury Department during the processing of an antidumping petition, similar to the time constraints ultimately imposed by the Trade Act of 1974, the Treasury Department estimated that the time constraints would require staff increases of approximately forty additional expert technicians plus additional supporting personnel. Despite the imposition of time constraints and the increase in the number of individual companies subject to dumping findings, from about seventy-five in 1972 to over four hundred today, the Customs Service staff responsible for administering the antidumping statute presently consists of only twelve professionals and approximately seven clerical.

We are quite concerned that domestic industries will not utilize the antidumping statute because of both the time and expense of prosecuting a petition and the apparent inability of the Treasury Department to promptly and correctly assess and collect any dumping duties due. We would appreciate receiving an indication from the Treasury Department on what steps are intended to cure the administrative problems that now exist and to insure that no administrative problems arise from increased utilization of the antidumping statute as is being recommended by the Administration.

Sincerely yours,

(S) DAN ROSTENOWSKI.
(S) CHARLES A. VANIK.
(S) WILLIAM A. STEIGER.

DEPARTMENT OF THE TREASURY,
Washington, D.C., October 19, 1977.

Hon. CHARLES A. VANIK,
House of Representatives,
Washington, D.C.

DEAR MR. VANIK: On behalf of the Secretary, I am writing to acknowledge receipt of your October 13 letter, co-signed by Congressmen Dan Rostenkowski and William A. Steiger, expressing concern over delays in Treasury's processing of antidumping cases and what steps are being taken to correct this situation.

You will have a report on this matter as promptly as possible.

Sincerely yours,

GENE E. GODLEY,
Assistant Secretary
(Legislative Affairs).

THE SECRETARY OF THE TREASURY,
Washington, November 2, 1977.

Hon. CHARLES A. VANIK,
Chairman, Subcommittee on Trade, Committee on Ways and Means, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Before he left for the Middle East, Secretary Blumenthal asked that I acknowledge your letter of October 13.

Concerning the status of the dumping proceedings initiated by Zenith Corporation with respect to television sets from Japan, we have been conducting a full investigation of the circumstances in this case which we hope to have completed

within the next two weeks. However, as you know, the actual determinations of duties due with respect to particular imports are essentially matters of confidential dealings between the importers and the Department. Therefore, we intend to prepare for your Committee a summary of the history of the case and of the broader policy questions it raises, including those mentioned in your letter.

With regard to your concern about the willingness of U.S. industry to use the Antidumping Act, as I indicated last week, antidumping petitions relating to a broad spectrum of steel products have been filed with Treasury in the past two months and additional petitions can be expected. Formal antidumping investigations on steel wire rod from France and a variety of steel products from Japan have been initiated. I believe they are evidence that interest remains in using the Act as an appropriate response to unfair practices in the import trade.

We share the concerns which prompted you to write and would also like you to know that in connection with the recent influx of cases, we are also carefully examining the procedures under the Act for ways to improve and expedite our investigations and actions. Any thoughts you might have in this area would be most welcome.

Sincerely,

ROBERT CARSWELL, *Acting Secretary.*

COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON TRADE,
Washington, D.C., October 25, 1977.

Hon. ROBERT E. CHASEN,
Commissioner of Customs,
U.S. Customs Service,
Washington, D.C. 20229

DEAR MR. COMMISSIONER: As you are aware, recent events have focused public interest on the nature and administration of the Antidumping Act of 1921, as amended by the Trade Act of 1974. To aid the Subcommittee on Trade in its oversight of this important provision of our laws, I would appreciate your supplying the Subcommittee with the following information.

1. For every antidumping case pending as of January 3, 1975 and every petition filed subsequent to that date, please list:

(a) the country and commodity involved,
(b) the name of the person or group filing the petition,
(c) the date on which the petition was filed,
(d) the nature of any final action taken by the Department, and
(e) where appropriate, the reason for a discontinuance of an investigation;

2. For each case in which an affirmative finding of dumping was made, please include:

(a) the current status of liquidation of entries,
(b) the amount of dumping duties collected to date,
(c) the nature of and reason for any modification or revocation of a dumping finding.
(d) the nature and amount of any cost of production adjustments requested by the exporter(s) concerned,
(e) the length of time required to make a decision with regard to a cost of the production adjustment request, and
(f) the nature of the action taken by the Department with respect to such request.

It is recognized that while portions of this information will be readily available, some of the requested material will require a certain amount of staff time and preparation. Nevertheless, I ask you to respond as soon as possible in view of the great importance of this matter. I would appreciate your sending the information as it becomes available.

Sincerely yours,

CHARLES A. VANIK, *Chairman.*

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, October 27, 1977.

Hon. CHARLES A. VANIK,
Chairman, Subcommittee on Trade, Committee on Ways and Means, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Thank you for your letter.

It is receiving our attention and we will reply to you as soon as possible.

Sincerely yours,

PAULINE WILSON,
Assistant to the Commissioner.

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, November 7, 1977.

Hon. CHARLES A. VANIK,
Chairman, Subcommittee on Trade, Committee on Ways and Means, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your letter of October 25, 1977, requesting certain information on antidumping. In answer to your questions 1 (a), (b), (c), (d), and 2 (a), (b), (c), there are enclosed charts outlining this information. Where a "Discontinuance of Antidumping Investigation" occurred, copies of the Federal Register notices which show the reasons for the action are enclosed.

Please be advised that a response to question 2 (d), (e), (f) concerning cost of production will take additional time and will be sent to you as soon as possible.

Sincerely yours,

G. R. DICKERSON,
Acting Commissioner of Customs.

Enclosures:

Commodity	Country	Petitioner	Date filed	Final action and date
Portable electric typewriters	Japan	Eugene L. Stewart, Esq	Feb. 14, 1974	No injury; June 20, 1975.
Welt work shoes	Romania	Collier, Shannon, Rill & Edwards, Washington, D.C., on behalf of American Footwear Industry Association.	Feb. 18, 1974	No injury; June 13, 1975.
Lock-in amplifiers	United Kingdom	Princeton Applied Research Corp., Princeton, N.J	Apr. 17, 1974	No injury; July 2, 1975.
Electric golf cars	Poland	Patton, Boggs & Blow, Washington, D.C., on behalf of Outboard Marine Corp., Waukegan, Ill.	June 7, 1974	Finding of dumping; Nov. 18, 1975.
Chicken eggs in the shell	Canada	United Egg Producers, Atlanta, Ga	June 11, 1974	NSLFV; Apr. 15, 1975.
Nonpowered mechanics' tools	Japan	Eugene L. Stewart, Esq., Washington, D.C	Aug. 5, 1974	No injury; Dec. 3, 1975.
Vinyl clad fence fabric	Canada	Geoffrey & Reardon, New York, N.Y	Sept. 27, 1974	No injury; Oct. 29, 1975.
Radial ball bearings	Japan	Pope, Ballard & Loos, Washington, D.C	Nov. 20, 1974	NSLFC; Sept. 23, 1975.
3-ply birch doorskins	do	Souther, Spalding, Kinsey, Williamson & Schwabe, Portland, Oreg	Dec. 12, 1974	Finding of dumping; Feb. 18, 1976.
Sealed rechargeable nickel cadmium batteries	do	Sharon, Pierson, Semmes, Crolius & Finley, Washington, D.C	Dec. 24, 1974	NSLFV; Oct. 24, 1975.
Water circulating pumps	Sweden	Taco, Inc., Cranston, R.I	Feb. 25, 1975	Discontinued; Jan. 5, 1976.
Butadiene acrylonitrile rubber (NBR)	Japan	Arthur, Dry & Kalish, New York, N.Y	Feb. 26, 1975	No injury; Mar. 29, 1976.
Water circulating pumps	United Kingdom	Taco, Inc., Cranston, R.I	Apr. 25, 1975	Finding of dumping; July 7, 1976.
Polymethyl methacrylate polymers	Japan	DuPont Co., Wilmington, Del	May 16, 1975	No injury; June 25, 1976.
Acrylic sheet	do	Rogers & Wells, Washington, D.C., on behalf of Polycast Technology Corp.	June 19, 1975	Finding of dumping; Aug. 30, 1976.
Ski bindings and parts thereof	West Germany	Wegner, Stellman, McCord, Wiles & Wood, Chicago, Ill., on behalf of Safety Systems, Inc.	June 24, 1975	No injury; Sept. 2, 1976.
Ski bindings and parts thereof	Austria	do	do	Do.
Do	Switzerland	do	do	Do.
Bricks	Canada	Interstate Brick Division, West Jordan, Utah	do	No injury; July 30, 1976.
Automobiles	Japan	Congressman John H. Dent	July 8, 1975	Discontinued; Aug. 18, 1976.
Do	Belgium	do	do	Do.
Do	West Germany	Congressman John H. Dent and Leonard Woodcock, president, UAW	do	Do.
Do	United Kingdom	do	do	Do.
Do	Italy	do	do	Do.
Do	France	Congressman John H. Dent	do	Do.
Do	Sweden	do	do	Do.
Do	Canada	do	do	Do.
Knitting machines for ladies seamless hosiery	Italy	Rockwell International, Reading, Pa	July 15, 1975	No injury; Nov. 27, 1976.
AC adapters	Japan	Jenner & Block, on behalf of Power Conversion Products Council, Chicago, Ill.	Sept. 19, 1975	NSLFV; July 13, 1976.
Tantalum electrolytic fixed capacitors	do	Eugene L. Stewart, Esq., Washington, D.C	Sept. 28, 1975	No injury; Oct. 22, 1976.
Cement	Mexico	Southwestern Portland Cement Co., El Paso, Tex	Oct. 20, 1975	No injury; Dec. 1, 1976.
Solid industrial vehicle tires	Canada	Baker & McKenzie, Washington, D.C., on behalf of Bearcat Tire Co., Chicago, Ill.	Nov. 13, 1975	NSLFV; Aug. 18, 1976.
Melamine in crystal form	Japan	Baker & McKenzie, Washington, D.C., on behalf of Melamine Chemical, Inc., Donaldson, La.	do	Finding of dumping; Feb. 2, 1977.
Automobile body dies	do	Arent, Fox, Kintner, Plotkin & Kahn on behalf of National Tool, Die & Precision Machining Association.	Jan. 21, 1976	Discontinued; Dec. 6, 1976.
Digital computer scales	do	McClure & Trotter, on behalf of Reliance Electric Co., Cleveland, Ohio.	Feb. 9, 1976	NSLFV; Jan. 6, 1977.
Clear sheet glass	Romania	Stewart & Ikenson, Washington, D.C., on behalf of Libby-Owens Ford, ASG Industries, and PPG Industries.	Mar. 9, 1976	No injury; Apr. 7, 1977.
Above-ground, metal-walled swimming pools	Japan	Arnold & Porter, Washington, D.C., on behalf of Muskin Corp., Colton, Calif.	Mar. 16, 1976	Finding of dumping; Sept. 7, 1977.

Commodity	Country	Petitioner	Date filed	Final action and date
Multimetal lithographic plates	Mexico	Freeman, Meade, Wasserman, Sharfman & Schneider, on behalf of Printing Developments, Inc., Racine, Wis.	Mar. 24, 1976	Terminated; May 27, 1976.
Pressure sensitive plastic tape	Italy	3M Corp., St. Paul, Minn	Apr. 9, 1976	Finding of dumping; Oct. 21, 1977.
Parts for self-propelled bituminous paving equipment.	Canada	Law-Bloaw Knox Construction Equipment, and Colwell Equipment Co., Inc.	Sept. 3, 1976	Finding of dumping; Sept. 7, 1977.
Railway track maintenance equipment	Austria	Stewart & Ikenson, Washington, D.C., on behalf of Kershaw Manufacturing Co., Montgomery, Ala.	Oct. 1, 1976	SLFV; Aug. 16, 1977.
Saccharin	Japan	Baker & McKenzie, Washington, D.C., on behalf of Sherwin-Williams Co.	Oct. 20, 1976	SLFV; Sept. 13, 1977.
Do	Korea	do	do	Do.
Animal glue and inedible gelatin	West Germany	Stewart & Ikenson, Washington, D.C., on behalf of National Association of Glue Manufacturers.	Dec. 23, 1976	SLFV; Aug. 3, 1977.
Do	Sweden	do	do	Do.
Do	Netherlands	do	do	Do.
Do	Yugoslavia	do	do	Do.
Impression fabric of man-made fibers	Japan	Stewart & Ikenson, Washington, D.C., on behalf of Impression Fabric Group.	Feb. 7, 1977	Appraisement withheld; Oct. 22, 1977.
Polyvinyl chloride sheet and film	Taiwan	Steptoe & Johnson, Washington, D.C., on behalf of Plastic Importers Action Committee.	Feb. 24, 1977	Appraisement withheld; Oct. 6, 1977.
Ice hockey sticks	Finland	Eagle Investment Co. of Minnesota	Mar. 2, 1977	Appraisement withheld; Sept. 22, 1977.
Welded stainless steel pipe and tubing	Japan	Collier, Shannon, Rill & Edwards, Washington, D.C	do	Extension to Jan. 6, 1978, for tentative action.
Carbon steel plate	do	Heller, Ehrman, White & McAuliffe, San Francisco, Calif., on behalf of Oregon Steel Mills Division of Gilmore Steel Corp.	Mar. 8, 1977	Appraisement withheld; Oct. 6, 1977.
Rayon staple fiber	Austria	Avtex Fibers. Lena, Hawes, Symington, Martin & Oppenheimer on behalf of Antex Fibers.	Mar. 3, 1977	Appraisement withheld; Oct. 19, 1977.
Motorcycles	Japan	Steptoe & Johnson, Washington, D.C., on behalf of Harely Davidson	June 8, 1977	Antidumping proceeding notice; July 15, 1977.
Rayon staple fiber	Belgium	Leva, Hawes, Symington, Martin & Oppenheimer on behalf of Avtex Fibers.	June 17, 1977	Antidumping proceeding notice; July 22, 1977.
Sorbic acid and potassium sorbate	Japan	Collier, Shannon, Rill, Edwards & Scott on behalf of Monsanto Co	July 18, 1977	Antidumping proceeding notice; Aug. 23, 1977.
Portland hydraulic cement	Canada	Barnes, Richardson & Colburn, Washington, D.C., on behalf of Glens Falls Division of Flintkote Co.	Aug. 2, 1977	Antidumping proceeding notice; September 8, 1977.
Methyl alcohol	Brazil	Graubard, Moskovitz & McCauley on behalf of Celanese Corp., New York, N.Y.	Aug. 11, 1977	ITC determination of no reasonable indication of injury; October 13, 1977.
Carbon steel wire rod, not tempered, not treated, and not partly manufactured.	France	Patton, Boggs & Blow, Washington, D.C., on behalf of Georgetown Steel Corp. and Georgetown Texas Steel.	Sept. 12, 1977	Antidumping proceeding notice; October 19, 1977.
Steel welded standard pipe	Japan	United States Steel Corp	Sept. 20, 1977	Antidumping proceeding notice; October 25, 1977.
Steel structural shapes	do	do	do	Do.
Steel sheets, hot-rolled, cold-rolled and galvanized.	do	do	do	Do.
Steel plates, other than not pickled, not cold-rolled and not in coils.	do	do	do	Do.

Commodity	Country	Date	Manufacturer
Revocation of dumping finding:			
Potassium chloride	West Germany	Mar. 21, 1975	
Do	France	Jan. 20, 1976	
Primary lead metal	Australia	May 7, 1976	
Do	Canada	do	
Cast iron soil pipe	Poland	July 27, 1977	
Tentative revocation of dumping finding:			
Tuners (of the type used in consumer electronic products).	Japan	Jan. 19, 1977	
Plate and float glass	do	Feb. 17, 1977	
Clear sheet glass	do		
Modification of dumping finding:			
Television sets	do	Feb. 13, 1975	Sony Corp.
Tuners	do	Apr. 1, 1975	Matsushita Electric Industrial Co., Ltd.; Matsushita Trading Co., Ltd.; Victor Co. of Japan.
Do	do	May 24, 1976	Tokyo Shibaura Electric Co., Ltd.
Do	do	Aug. 3, 1976	Sanyo Electric Co., Ltd.; Sanyo Electric Trading Co., Ltd.
Do	do	Jan. 12, 1977	Sony Corp. of Japan.
Pig iron	Canada	May 12, 1975	Quebec Iron & Titanium Corp.
Large power transformers	United Kingdom	Apr. 7, 1976	Ferranti, Ltd.; Hawker Siddeley Electric Export, Ltd.; Parsons Peebles Power Transformers, Ltd.
Potassium chloride	Canada	Aug. 6, 1976	Brockville Chemical Industries, Ltd.; Hudson Bay Mining & Smelting Co., Ltd.; Swift Canadian Co., Ltd.; Cominco, Ltd.
Do	do	Aug. 17, 1977	Duval Corp. of Canada; Amax Potash Ltd.
Tentative modification of dumping finding:			
Tempered sheet glass	Japan	Sept. 12, 1975	Asahi Glass Co., Ltd.
Large power transformers	Italy	May 24, 1976	Asgen Ansaldo San Giorgio Compagnia General S.p.A.; Societe Nazionale delle Officine di Savigliano.
Diamond tips for phonograph needles.	United Kingdom	May 25, 1976	Fidelitone International, Ltd.
Large power transformers	Switzerland	July 16, 1976	Brown Boveri & Co., Ltd.
Calcium pantothenate	Japan	July 27, 1977	Daiichi Seiyaku Co., Ltd.
Clear sheet glass	France	Aug. 18, 1977	St. Gobain Industries.
Roller chain	Japan	Aug. 17, 1977	Honda Motor Co., Enuma Chain.
Do	do	Oct. 4, 1977	Daido Kogyo Co., Ltd.
Sulfur	Mexico	Sept. 8, 1977	Azufrera Panamericana S.A.
Final termination of discontinued investigation:			
Photo albums	Canada	Sept. 28, 1977	
Large powers transformers	Sweden	do	
Tentative termination of discontinued investigation: Rubber thread	Italy	May 11, 1977	

FINDINGS OF DUMPING

Commodity	Country	Year of finding	Master lists issued through (all manufacturers)	Approximate duties assessed
Portland cement	Sweden	1961	June 1973	$77,700
Do	Belgium	1961	(1)	
Do	Portugal	1961	(1)	
Do	Dominican Republic	1963	(1)	
Steel bars	Canada	1964	December 1970	80,100
Steel shapes	do	1964	November 1972	95,800
Steel jacks	do	1966	December 1976	101,600
Pig iron	U.S.S.R.	1968	(1)	
Do	East Germany	1968	(1)	
Do	Romania	1968	(1)	
Do	Czechoslovakia	1968	(1)	
Titanium sponge	U.S.S.R.	1968	February 1977	579,000
Potash	Canada	1969	December 1973	6,500
Aminoacetic acid	France	1970	(1)	
Whole dried eggs	Holland	1970	(1)	
Tuners	Japan	1970	December 1974	131,000
Steel bars and shapes	Australia	1970	(1)	
Pig iron	Canada	1971	April 1977	
Sheet glass	Taiwan	1971	June 1974	337,900
TV's	Japan	1971	April 1972	1,487,000
Ferrite cores	do	1971	December 1974	900

See footnotes at end of table.

FINDINGS OF DUMPING—Continued

Commodity	Country	Year of finding	Master lists issued through (all manufacturers)	Approximate duties assessed
Clear sheet glass	Japan	1971	June 1973	
Do	West Germany	1971	(1)	
Do	France	1971	(1)	
Clear plate and float glass	Japan	1971	June 1973	
Pig iron	West Germany	1971	December 1972	
Do	Finland	1971		
Wall tile	United Kingdom	1971	September 1973	$218,000
Sheet glass	Italy	1971	December 1973	50,600
Potato granules	Canada	1972	June 1976	180
Ice cream wafers	do	1972	December 1976	
Asbestos cement pipe	Japan	1972	(2)	297,000
Bicycle speedometers	do	1972	December 1973	240
Cadmium	do	1972	(1)	
Fish netting	do	1972	July 1972	74,400
Diamond tips	United Kingdom	1972	December 1973	12,300
Drycleaning machinery	West Germany	1972	June 1974	1,100
Sulphur	Mexico	1972	December 1972	30,700
Transformers	France	1972		
Do	Italy	1972	December 1973	
Do	Japan	1972		
Do	Switzerland	1972	December 1973	
Do	United Kingdom	1972		
Wire rods	France	1973		
Stainless steel plates	Sweden	1973	December 1973	198,400
Polychloroprene rubber	Japan	1973	June 1976	
Synthetic methionine	do	1973	June 1973	118,000
Roller chain	do	1973	July 1973	316,000
Steel wire rope	do	1973	December 1974	13,300
Wood pulp [3]	Canada	1973	June 1973	404,000
Vinyl film	Argentina	1973	September 1974	
Do	Brazil	1973	(1)	
Canned pears	Australia	1973	(1)	
Sulfur	Canada	1974	October 1974	32,200
Calcium pantothenate	Japan	1974	June 1976	13,000
Expanded metal	do	1974	December 1974	
Primary lead [3]	Canada	1974	September 1975	
Racing plates	do	1974	January 1975	
Picker sticks	Mexico	1974		
Gulf cars	Poland	1975	July 1975	610,000
Water pumps	United Kingdom	1976		
Acrylic sheet	Japan	1976	June 1976	15,000
Roller bearings	do	1976		
Plywood doorskins	do	1976	November 1975	13,800
Tempered sheet glass	do	1976	December 1973	7,200
Melamine	do	1977		
Above-ground, metal-walled swimming pools.	do	1977		
Pressure sensitive plastic tape	Italy	1977		
Part for self-propelled bituminous paving equipment.	Canada	1977		
Animal glue and inedible gelatin [4]	West Germany	1977		
Do	Sweden	1977		
Do	Netherlands	1977		
Do	Yugoslavia	1977		

[1] No shipments.
[2] Case in court, file unavilable.
[3] Final revocation issued.
[4] ITC determination of injury Oct. 29, 1977, finding of dumping to be issued.

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, D.C., December 8, 1977.

HON. CHARLES A. VANIK,
Chairman, Subcommittee on Trade, House Committee on Ways and Means, Washington, D.C.

DEAR MR. CHAIRMAN: This refers to your letter of October 25, 1977, requesting certain information regarding antidumping. On November 7, 1977, we supplied your office with all the data requested except that relating to cost of production. Enclosed herewith is the information on cost of production.

Please note that the amounts shown on the enclosed chart for differences in cost of production represent the maximum claimed for any model or size involved in a particular case. Because of the differences in models or sizes, claims and allowances could range from the maximum amount down to zero; in some instances, allowances were either totally disallowed on particular models

or sizes, or additions were made to foreign market prices to reflect higher costs of production for the imported article. In general, it can be said that very few allowances are ever granted in the exact amounts claimed.

With regard to problems of delay in appraisements arising because of claims for differences in cost of production, there are only two commodities presently under findings of dumping where this has caused difficulty; the commodities are television receivers from Japan and large power transformers from France, Italy, Japan, Switzerland and the United Kingdom. On these causes, it has taken a period of years to reach conclusions on the claimed adjustments. On all other cases, data on cost differences comes in routinely as questionnaires are issued, and decisions are usually made within a period of several months after the receipt of the information.

If the Customs Service can be of further assistance to you, please advise me at your convenience.

Sincerely yours,

R. E. CHASEN,
Commissioner of Customs.

Enclosure.

Commodity	Country	Maximum amount claimed [1]	Allowed
Water circulating pumps	United Kingdom	$6 per unit	Yes.
Ski bindings	Switzerland	$0.66 per unit	Yes.
Automobiles	Italy	$585 per unit	Yes.
Do	France	12 percent	Yes.
Do	West Germany	25 percent	Yes.
Railway track equipment	Austria	$21,000	Yes.
Pressure sensitive tape	Italy	($0.07 per roll) 6 percent	Yes.
Saccharin	Korea	¥70 per kilo	Yes.
AC adapters	Japan	¥25.5 per unit	Yes.
Digital computer scales	do	Minimal	No.
Nonpowered mechanics tools	do	35 percent	Yes.
Bicycle speedometers	do	¥34.88 per unit	Yes.
Industrial vehicle tires	Canada	$1.10	Yes.
Automobiles	do	$49	Yes.
Do	Sweden	$282	Yes.
Large power transformers	Italy	50 percent	Yes.
Do	Switzerland	do	Yes.
Do	Japan	do	Yes.
Do	France	do	Yes.
Do	United Kingdom	do	Yes.
Television sets	Japan	$70	Yes.
Automobiles	United Kingdom	15 percent	Yes.
Do	Japan	$885	Yes.
Do	Belgium	10 percent	Yes.

[1] The claims for material adjustments shown in this column represent claims for items such as pollution control and safety equipment for automobiles, which were on the U.S models but not the foreign, to the differences in the amounts of core steel copper winding material and insulation material on large power transformers. Attached is a sample copy of an automobile submission requesting adjustments for differences in the merchandise compared. Each and every item on the list had to be considered in reaching a bottom line adjustment figure.

COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON TRADE,
Washington, D.C., November 11, 1977.

Hon. W. MICHAEL BLUMENTHAL,
Secretary of the Treasury, Washington, D.C.

DEAR MR. SECRETARY: In reference to the Trade Subcommittee's November 8 oversight hearing regarding the administration of the Antidumping Act, I am forwarding those questions to which your representatives, Mr. Mundheim and Commissioner Chasen, were unable to furnish answers at the hearings as well as some additional questions which, due to time restraints, the Subcommittee Members were unable to ask. We would appreciate receiving your response by November 16, in order to include the questions and your replies in the printed record of the hearing.

I would also like to take this opportunity to ask for your consideration and comment on a proposal regarding a possible "early warning system" of potential dumping in the U.S. market. During the afternoon session, a public witness mentioned that the Davignon Plan of the European Economic Community provided a minimum price for European steel sold in the Community and that

such information is available to the public. I raised the question of whether Treasury should compare the Davignon Plan prices with those of European steel imported into the U.S. in order to provide an early warning of apparent sales at less than fair value and a possible dumping situation. I would appprecíate receiving your comments on that proposal.

Thank you for your consideration.

Sincerely yours,

CHARLES A. VANIK, *Chairman.*

DEPARTMENT OF THE TREASURY,
Washington, D.C., December 7, 1977.

Hon. CHARLES A. VANIK,
Chairman, Subcommittee on Trade, House Committee on Ways and Means, Washington, D.C.

DEAR MR. CHAIRMAN: I appreciate the opportunity to respond to the questions raised by you and the members of the Trade Subcommittee regarding the administration of the Antidumping Act. Attached are the responses to a number of the questions. The Department is preparing answers to the remainder for transmission to you as soon as possible.

In your letter of November 11, 1977, you requested my comments on an "early warning system" based upon a comparison of the Davignon Plan prices with those of European steel sold in the United States. I am not satisfied that Davignon Plan prices indicate the price of steel in the European Community accurately enough to be used as an early warning device. Except for a few products, the prices in the Davignon Plan are only administrative suggestions, not mandatory prices. I understand that actual transaction prices in Europe are frequently below the Davignon Plan prices, even where these prices are "mandatory".

Under Secretary Solomon has briefed you about the reference price monitoring system his task force is developing to organize Treasury's resources so that it can identify situations in which it would be appropriate to initiate antidumping investigations for steel mill products imported into the U.S. This system also contemplates accelerated application of remedies under the Antidumping Act.

Implementation of this monitoring system will pose substantial problems. It is likely that experience with the initial efforts will demonstrate the need for refinements in the system. Until we have had an opportunity to evaluate the reference price monitoring system, it would be premature to determine if a broader application of such a system would be sensible.

Sincerely,

W. MICHAEL BLUMENTHAL,
Secretary.

DEPARTMENT OF THE TREASURY,
Washington, D.C., December 23, 1977.

Hon. CHARLES A. VANIK,
Chairman, Subcommittee on Trade, House Committee on Ways and Means, Washington, D.C.

DEAR MR. CHAIRMAN: Following the hearings before your Subcommittee on November 8, you sent a letter to Secretary Blumenthal enclosing a series of questions you and other members of the Subcommittee had addressed to Messrs. Mundheim and Chasen at the hearing.

Enclosed please find our replies to those questions. We regret the delay in forwarding these replies, but trust they will have been received in time for incorporation into the record of the proceedings.

Sincerely,

PETER D. EHRENHAFT,
Deputy Assistant Secretary and Special Counsel (Tariff Affairs).

Enclosures.

QUESTIONS SUBMITTED IN SUBCOMMITTEE'S NOV. 11, 1977, LETTER AND TREASURY'S RESPONSE

1. In a number of antidumping cases, notably the Japanese TV and the Canadian steel bars cases, entries have not been liquidated in years.

(*a*) In Secretary Blumenthal's letter to the Subcommittee dated June 16, 1977 he states that the delay in liquidating entries of Japanese TVs (entries have not been liquidated since 1973) is partially due to Treasury's inability to evaluate exporters' requested price adjustments due to the complexity of cost of production figures and the reluctance of Japanese exporters to furnish cost of production data.

What is the value of televisions entering the U.S. since 1973 when entries were last liquidated? How much does this represent in normal entry duties? How much of this amount has been collected to date?

Answer. The Customs Service estimates that the value of television sets imported from Japan from 1973 through the first eight months of 1977 and subject to the dumping finding amounts to $1.67 billion. The total normal entry duties on this merchandise amounted to $83 million, all of which have been collected.

ESTIMATED TOTAL IMPORTS OF TV'S (MILLION $)

	Value	Amount normal duties
		[1]
1973	$280	$13.5
1974	243	12.0
1975	235	12.0
1976	547	27.5
1977 [2]	365	18.0
Total	1,670	83.0

[1] This does not include antidumping duties.
[2] 1st 8 mos only.

(*b*) Can you estimate the total amount of uncollected entry duties arising from unliquidated entries subject to dumping findings?

Answer. The withholding of appraisement on products subject to a dumping finding does not delay the payment of normal entry duties. Thus, the only uncollected entry duties on such products would be antidumping duties. In order to estimate the total amount of uncollected antidumping duties on the approximately 70 antidumping cases outstanding, a considerable amount of data must be collected from the Customs agents in the field. Customs has initiated a survey to gather this information and an estimate of uncollected antidumping duties will be provided to the Committee as soon as it is available.

[The information follows:]

The Customs Service prepared last month the attached list of products subject to an antidumping finding showing the value of unliquidated entries and the dumping margins found in the initial Treasury Department investigation of sales at less than fair value. This list indicates the potential antidumping duty liability on unliquidated entries. However, experience indicates that the actual antidumping duties paid will probably be much less than those indicated on the chart. For example, in the case of sulphur from Canada, where the total value of unliquidated entries is approximately $53 million, Customs estimates that the actual antidumping duties paid are likely to be about $50,000 since prices have been drastically revised since the initial findings. That is the usual experience in most cases.

[List follows:]

MERCHANDISE HELD UNDER 010 PURSUANT TO FINDING OF DUMPING

Commodity	Country	Value	Percent[1]
Potash	Canada	$310,927,919	10.0
Potato granules	do	156,049	10.0
Sulphur	do	53,000,061	11.0
Paving equipment	do	1,741,050	31.0
Fish netting	Japan	7,887,000	11.0
Roller chain	do	55,039,000	20.0
Power transformers	United Kingdom	8,060 079	10.0
Pig iron	Canada	1,839,817	7.0
Ice cream wafers	do	79,675	3.0
Roller bearings	Japan	81,060,939	17.0
Expanded metal	do	1,556,000	8.0
Wire rope	do	42,326,000	7.0
Swimming pools	do	1,546,000	3.5
Power transformers	France	1,367,263	9.0
Do	Japan	2,869,000	28.0
Drycleaning machines	Germany	3,823,423	15.0
Vinyl film	Argentina	25,471	33.0
Do	Brazil	91,427	52.0
Bicycle speedometers	Japan	1,381,000	23.0
Wire rods	France	9,269,000	22.0
Steel plates	Sweden	3,151,000	18.0
Plastic tape	Italy	4,833,000	10.0
Acrylic sheet	Japan	894,000	30.0
Synthetic rubber	do	51,899	55.0
Animal glue	Yugoslavia	237,209	10.0
Ferrite cores	Japan	334 000	25.0
Wall tile	United Kingdom	11,386,000	46.2
Methionine	Japan	25,072,000	50.0
Pantothenate	do	3,961,000	9.0
Sheet glass	Germany	143,503	36.0
Tuners	Japan	15,869,000	21.5
Sheet glass	Italy	1,174,000	20.0
Do	Japan	2,164,000	70.0
Sulphur	Mexico	179,712,000	73.0
Doorskins	Japan	23,882,000	5.0
Potash	Germany	2,160,420	75.0
Water pumps	United Kingdom	993,593	33.0
Golf carts	Poland	11,146,930	50.0
Titanium sponge	U.S.S.R.	1,770,227	40.0
Diamond tips	United Kingdom	523,178	20.0
Tempered glass	Japan	378,031	4.0
Picker sticks	Mexico	955,924	120.0
Sheet glass	Taiwan	2,644,702	9.0
Float glass	Japan	1,986,677	10.0
Pig iron	Finland	64,000	6.0
Animal glue	Sweden	21,000	90.0
Do	Holland	191,000	20.0
Power transformers	Italy	4,740,539	9.0
Cement	Sweden	3,749,843	20.0
Racing plates	Canada	195,470	4.0
Hardwood pulp	do	28,290,896	5.0
Steel bars and shapes	do	2,025,093	10.0
Steel reinforcing bars	do	265,714	10.0
Steel jacks	do	310,445	1.0
TV sets	Japan	2,700,000,000	20.0

[1] In most instances, the percentage amounts shown reflect bonding amounts set at the time of the fair value investigation; they are, therefore, probably not representative of current margins which tend to decrease or disappear over the years.

Note: The District of San Francisco is not included in this report.

(*c*) What is the average length of time between an entry and a liquidation for imports subject to a dumping finding?

Answer. The Customs Service has estimated that the average time lag in the recent past has been approximately three to three and a half years.

(*d*) If there is a significant period of time between entry and liquidation, doesn't this adversely affect government revenues while, at the same time, present the importer with a windfall "float"? (See table).

Answer. The Committee's chart appears to assume that normal entry duties are not collected until final liquidation. This is not true. Only antidumping duties remain uncollected after entry and until final liquidation. There is certainly an advantage to the importer in posting a bond until the antidumping duties are actually assessed if the cost of the bond is less than the cost of borrowing the same amount. However, this may not be the case when account is taken of both the premium on the bond and the collateral that sureties require as a rule to

secure the payment of the bond. Moreover, in many cases the actual duty liability is much less than the face amount of the bond, especially when the exporter has raised his prices to eliminate any liability for antidumping duties.

EXAMPLE OF COST TO IMPORTER OF PAYMENT OF ENTRY AND DUMPING DUTIES COMPARED WITH COST OF BONDS

Japanese TV's

Imports in 1976 (value in dollars)	572, 736, 000. 00
Entry duties owing (5 percent ad val)	28, 636, 800. 00
Dumping duties owing	Unknown
Cost of bond to cover entry duties ($1.25 per $1,000)	35, 796. 00
Bond covering potential dumping duties:	
Required face amount of bond (9 percent value of entry in 1976)	51, 546, 000
Cost of bond ($5)	257, 731
($5–10 per $1,000) ($10)	515, 462

Thus, at a maximum cost of $551,258, importers defer a minimum payment of $28,636,800.

Interest accruing on investment of deferred payment could yield between $1,431,840 (5 percent rate of return) and $2,863,680 (10 percent rate of return). This covers total cost of bonds and leaves sizeable net gain.

2. The timing restraints added to the Antidumping Act by the Trade Act of 1974 ended Treasury's practice of unnecessarily prolonging the making of a dumping finding. However, now we find that after publication of a dumping finding, Treasury fails to liquidate entries and collect applicable dumping duties. Perhaps the answer is for Congress to impose similar time constraints on liquidation of entries subject to a dumping finding.

What are your views on this proposal?

Answer. There is no satisfactory justification for the considerable delay between entry and liquidation for products subject to a dumping finding. The Treasury is working to reduce this delay to approximately one year, based upon the time needed to collect the information on which to base an assessment. There are, however, some limitations inherent in the complexities of the calculations on which antidumping duty assessment must be based. For example, in the case of television sets from Japan, Treasury had to decide on an unprecedented number of complex requests for adjustments due to different circumstances of sale. Nevertheless, the Department recognizes the need to improve its record in this area and it is working to do so.

Legislated time limits on liquidation are not the right solution to this problem. Such time limits could lead to overstaffing in order to have enough staff on hand to meet unusual surges in work loads. They could also lead to unnecessary litigation over the basis for duties assessments if assessments are based on the information available within the time limits which later proves to be inadequate.

3. What is the reason for singling out steel and precluding other items from action contemplated by the "Solomon" plan?

Answer. There are a number of reasons why the situation in the steel industry is unique and warrants the special measures being implemented. First, the steel industry is one of the largest U.S. industries and a substantial and continuing shrinkage of the U.S. capacity to produce steel is not in the interest of the U.S. economy from strategic as well as economic points of view. Second, the number of antidumping complaints filed with the Treasury Department since February, 1977 is unprecedented for a single industry in so short a time frame. These considerations require the Treasury Department to organize its resources as effectively as possible to deal with the problem raised by these antidumping complaints.

However, the implementation of this monitoring system will pose substantial problems at a considerable cost in manpower and budgetary resources. Current estimates indicate that 80 additional staff will need to be hired and the total cost of the monitoring system will be $2 million on an annual basis. It is likely that experience with the initial efforts will demonstrate the need for refinements in the system. Until we have had an opportunity to evaluate the reference price monitoring system in the light of these considerations, it would be premature to determine if a broader application of such a system would be sensible.

4. Are such actions (on a temporary basis) consistent with our obligations under international anti-dumping law and the GATT?

Answer. A reference price monitoring system for steel, if properly administered, would be consistent with U.S. international obligations under both the International Anti-Dumping Code (the Code) and the GATT.

The reference price monitoring system simply provides a mechanism for organizing Treasury resources so that it can take accelerated action to remedy unfair trading practices relating to steel mill products. Article 5(a) of the International Anti-Dumping Code clearly authorizes responsible authorities in special circumstances to initiate invesitgations without a complaint from the affected industry. The special circumstances affecting the steel industry clearly warrant this action. Since the Code is an agreed interpretation of Article VI of the GATT, no problems are posed by that agreement.

5. In the Trade Act of 1974, Congress amended the Anti-Dumping Act by providing that in the event of sales in the market of the exporting country are less than the cost of production, Treasury would use a "constructed value" (the cost of labor, materials and a fixed percentage for general expense and profit) in determining dumping margins.

Under the U.S. Antidumping Law, a minimum 8 percent profit factor is added in.

In 1975 and 1976, how many foreign steel companies obtained an 8 percent profit level:

Answer. Under the U.S. Antidumping Act, as amended by the Trade Act of 1974, whenever sufficient evidence has been presented, the Secretary of the Treasury is required to determine whether a product is being sold in the home market of the country of exportation or third country markets at prices which represent less than the cost of production. If he concludes that in fact such sales were made at less than the cost of production over an extended period of time and in substantial quantities in the normal course of trade and at prices that do not permit the recovery of all costs within a reasonable time, he must exclude such sales prices in making less than fair value determinations. If, as a result of excluding such sales, the remaining sales are determined to be inadequate as a basis for determining foreign market value, the Secretary must use a constructed value for such purposes. If a constructed value is used, a minimum 8 percent profit factor must be included. The Treasury Department officials who have reviewed data on foreign steel operations in connection with antidumping investigations are not aware of any foreign steel companies which obtained an 8 percent profit level in 1975 and 1976. Nor have domestic companies achieved such profits. Therefore, the rule requiring a minimum 8 percent profit to be included in determining constructed value may be viewed as unfair. It also tends to overstate the fair value of merchandise made by companies (such as those in Japan) whose working capital is more extensively derived through borrowing than equity investments, since it adds an 8 percent factor to costs that we generally consider includes interest expenses. The mandatory 8 percent margin has been criticized by many of our foreign trading partners as contrary to Article 2(d) of the International Antidumping Code, under which the standard for profits is to be those "normally realized on sales of products of the same general category in the domestic market of the country of origin."

6. Do other countries, e.g. Canada, Australia, European Community, have authority statutory requirements similar to ours regarding sales at below cost of production?

Answer. In the case of Canada, the law allows for a computation of "normal value" (the equivalent of our "fair value") in a manner prescribed by the Minister of National Revenue. Normal value is based on the price of like goods sold by the exporters in the ordinary course of trade for home consumption under competitive conditions (Article 9(1)(b)). In some cases where sales below cost have occurred, the Canadians have resorted to Ministerial "prescription" and used of production information in arriving at "normal value" determinations. The Canadian authorities have used such an approach in connection with their recent steel investigation.

In Austrila, the authorities are permitted to include an amount for profit when calculating normal value for comparison purposes (Article 5(2)(a)(iv)). We are unaware of any specific instance in which the Australian authorities have disregarded sales below the cost of production for purposes of determining normal value. However, we were supported by the Austrian delegation at the recent Anti-Dumping Code Committee meeting in our position that sales below the cost

of production, over an extended period of time, could be disregarded for fair value purposes.

7. Where an exporter makes an outright refusal to supply information (as in the Gilmore steel case) the Treasury Department apparently feels justified in proceeding on the basis of the best available information in making its determination regarding sales at less than fair value.

Does Treasury proceed in the same manner whenever an exporter delays making such a submission beyond a reasonable length of time?

Answer. In conducting its fair value investigation, the Treasury imposes strict time limits governing exporters' responses to Treasury questionnaires. These questionnaires are delivered to the exporters within several days after publication of the notice initiating an investigation. The exporters are given 30 days in which to respond, and that the Department has adequate time within which to with an additional 15 days granted only in cases of extreme complexity. If information is not provided, or the information furnished is inadequate, or unverified, the Department proceeds on the basis of the best information available. The purpose of these time limits is to insure that exporters have adequate time in which to respond, and that the Department has adequate time within which to analyze and verify any information it receives.

It should be noted that in the Gilmore case, the exporters did initially supply home market and U.S. sales price information. However, the exporters originally refused to supply either third country sales or cost of production information. Since some cost of production information was available from the petitioner and from other sources, Treasury felt justified in utilizing such information as the best information available for purposes of the Tentative Determination. Thereafter, the exporters supplied certain cost of production information which will be considered in making the Final Determination.

8. Because the law requires that dumping duties be assessed on the basis of present price comparisons, Treasury must continually revise its pricing information on foreign exports.

How much time generally elapses between a request for revised information from the Treasury and the submission of *complete* answers in a form which can be analyzed by Customs (e.g., submissions are in English, not in the language of the exporting country)?

Answer. The Customs Service usually allows exporters 30 days to respond to requests for updated price information, with possible extensions of an additional 30 days. However, it is not unusual that additional contact is made to clarify information in these responses. This normally takes only an additional 10 or 15 days, depending on the complexity of the issues.

9. It is our understanding that Treasury's task in making price comparisons for the purpose of assessing dumping duties is complicated by exporter requests for adjustments based on differences in circumstances of sale, quantities sold, or cost of production.

Why are there no strict time limits for submission of information by exporters, particularly—when the information is required to determine the validity of an adjustment requested by the exporter?

At what point after requesting information from the exporter do we cease waiting for an answer and proceed on the basis of the best available information?

Answer. In the past Customs has not placed a high priority on insuring that exporters adhere to strict time limits in providing information regarding antidumping duty assessments. Accordingly, there has been no set time limit after which Customs proceeds on the basis of the best available information. The Commissioner of Customs has reviewed this situation and determined that it results in unacceptable delays in the liquidation of entries subject to dumping findings. As a result Customs will be devoting more resources to the assessment stage of antidumping proceedings and will utilize the best information available when necessary. Specifically, Customs will continue to make regular requests for information, but will now require exporters to respond within thirty days, with one thirty day extension available. When these time limits have expired Customs may proceed on the best information available.

10. What pricing information do you routinely transmit to the International Trade Commission when sending that agency advice under section 201(a) of the Act? Do you send them all information at your disposal regarding U.S. sales of the imported LTFV merchandise? Is this information put in a standard format?

Answer. Treasury transmits to the International Trade Commission all of the information on prices and sales which it uses in its investigation of sales at less

than fair value. Generally, this information is not put in a standard format. Rather, Treasury transmits this information to the ITC in the same format in which Treasury received it.

11. Since the Antidumping Act is specifically excluded from the provisions of the Administrative Procedure Act, what sort of record is maintained of the proceedings leading to a determination of LTFV sales or no LTFV sales?

Answer. Treasury's antidumping investigation was specifically excluded from APA requirements by the Trade Act of 1974. Nevertheless, Treasury does develop an extensive "record" based on material presented during an investigation. Deletions are made from this record only to protect confidential information. All nonconfidential material presented during an investigation is placed in a reading file which is made available to all interested parties. A transcript of the oral hearing provided to all parties is also prepared at Treasury's expense. It is our belief that these procedures conform with an open and fair administration of the law, while recognizing the legitimate need to maintain the confidentiality of business information.

12. During the full-scale investigation phase and during the administration of an antidumping finding, Customs must receive confidential business information from foreign producers and must verify such information.

Is there a reluctance on the part of foreign producers to supply confidential business information?

How does Treasury or Customs protect the confidentiality of information submitted on that basis?

If additional protection is needed, should it be by means of a revision of Treasury regulations or should it be on the basis of statutory revision?

When Customs verifies information, how is this done?

In attempting to verify information, doesn't Customs ever independently verify such information? For example, I understand that in a Section 337 case involving Japanese televisions, the ITC had comparable home market sets and export sets purchased and analyzed by an independent testing laboratory. Has Customs ever done this to verify both that the similar home market television set selected is the most appropriate and that the cost differentials are justified?

Answer. Customs often encounters reluctance on the part of foreign producers to supply confidential business information. However, when it is made clear to the foreign producers that the information will be protected from disclosure, the information is normally made available.

Customs protects confidential information by retaining it in files which are not available to the public. All information on which an exporter requests confidential treatment is clearly marked, so as to prevent inadvertent disclosure. (Non-confidential summaries of confidential data must be furnished to enable other interested parties to comment on the submission.)

Customs does not believe that any additional protection of confidential business information is required. To date we know of no unauthorized release of such information by the Customs Service or complaints of such release by foreigners or domestic interests. The Customs Service is constrained by the provisions of the Freedom of Information Act, which provides guidelines for protecting confidential business information. Any changes in Customs regulations would, of course, conform to the provisions of that Act.

Customs normally verifies information submitted by foreign producers from the original books and records of those firms. This is considered to be the most reliable source of information on the operating costs of any particular firm. Verifications through independent sources are occasionally used, but such verifications are considered less reliable than first hand source documents.

13. The law permits the withholding of appraisement to be effective from 120 days prior to the publication of the "Antidumping Proceeding Notice."

We understand that the regulations, however, generally provide for withholding of appraisement prospectively and that it is seldom done retroactively. Why?

Answer. Section 201(b) of the Act authorizes the Secretary to withhold appraisements of unliquidated entries retroactively for a period of not exceeding 120 days prior to the publication of the notice initiating and investigation. It has been Treasury practice, as reflected in the antidumping regulations (See 19 CFR 163.35), that the withholding applies prospectively and not retroactively. The reason is that we believe that the law is intended to be remedial and not punitive. If Treasury were to withhold retroactively, U.S. importers who purchased foreign merchandise without knowledge of an antidumping proceeding could be unfairly penalized by the retroactive assessment of dumping duties.

There are situations, however, where Treasury would consider withholding retroactively. For example, as noted in the regulations, (See 19 CFR 153.365(d)):

> Such action would appear to be appropriate when appraisement is withheld regarding a class or kind of merchandise as to which a dumping finding has been revoked, at least in part on the basis of price assurances, and the Secretary concludes such situation reflects a history or pattern of the below fair value sales.

14. Under regulations promugated by the Treasury, a single entry consumption bond covering both normal duty and any dumping duty can be furnished to effect the entry of merchandise under either a withholding notice or a dumping finding. Only when either the resale price in the U.S. is unknown or the district director requires it, must an additional special dumping bond be furnished.

Can you estimate how often a special dumping bond is required because the resale price is unknown?

Can you advise us whether, since January 1975, any district director has exercised his discretion and required that an additional dumping bond be furnished?

If yes, is this a unique situation? How often do you believe it has occurred?

Answer. Of entries currently withheld from appraisement for dumping purposes, the types of bonds used are as follows:

(1) Term or general term bond, 82 percent.

(2) Special dumping bond (resale price unknown), 2 percent.

(3) Single entry bond (to cover potential dumping duties plus normal duties), 16 percent.

15. The Secretary has discretion during a dumping investigation to discontinue an investigation on a number of grounds, including when he determines that there are other circumstances on the basis of which it may no longer be appropriate to continue the investigation.

Can you give us some examples of what these other circumstances are?

If an investigation is discontinued on the basis of other circumstances, how can you be sure that dumping will not continue since there is no requirement of assurances to Treasury?

Have any investigations been discontinued on the basis of other circumstances?

When an investigation is discontinued on the basis of price assurances, what is the normal time period within which the frequency with which the exporter must file reports with the Commissioner?

Are these reports usually filed on a timely basis or are they subject to lengthy delays?

Does Customs verify by independent means the information contained in these reports?

Answer. The Secretary has utilized his authority to discontinue dumping investigations when "there are other circumstances on the basis of which it may no longer be appropriate to continue the antidumping investigation" only twice. The first involved fur felt hat bodies from Czechoslovakia. In that case, during the investigation, the U.S. industry which filed the petition went out of business, with no prospect of revival. Furthermore, by continuing the investigation, it was asserted that the U.S. industry which utilized the imports would be adversely affected.

The second case involved the recent automobile investigations. In those cases, completed in 1976, unique circumstances were determined to exist which required such action. Furthermore, commitments were received that dumping margins would be eliminated. In both instances cited, the intent of the Act was furthered, and these are the types of cases in which the Secretary would utilize this basis to discontinue an investigation.

In the most significant case in which discontinuances on the basis of price assurances were ordered—automobiles—monitoring is done twice a year for the companies with the most significant margins and once a year for the remainder. The responses to the monitoring questionnaires are usually not filed within 30 days as requested, but they have all been received within 90 days of the request.

In all other cases of discontinuance based on price assurances, no regular timetable for monitoring reports has been established, but an effort to monitor has been undertaken in every case. The Customs Service expects to place greater emphasis on this area as additional staffing becomes available.

There is an effort by the Customs Service to verify some of the information collected in its monitoring of price assurances. While 100 percent verification

is not undertaken, Customs agents in foreign countries do a spot check to verify information received or in instances where the information itself indicates that verification should be carried out.

Further, the affected U.S. industry tends to monitor the situation independently and has called to the attention of the Service cases in which price assurances were apparently breached. In such cases, the Service immediately investigates and, in appropriate situations, proceedings have been reopened.

16. In our hearing Friday on the U.S. trade deficit, the National Machine Tool Builders' Association cited the example of a sophisticated Japanese machine tool being sold for $390,000 in the United States and for $750,000 in Canada. Either the Canadians are being taken—and they are usually too smart for that—or the machine is being dumped in the U.S. so that the item can penetrate the U.S. market. In a case such as this, can the evidence of an item being sold for a higher price in a substantially similar market be used as proof of dumping here?

Answer. The Antidumping Act requires the Secretary to look first to the sales prices in the home market of the exporting country in determining whether there have been sales at less than fair value. A petitioner may, however, submit information showing that prices to a third country are higher than the price to the United States where he also alleges that proof of prices in the home market could not be obtained. However, this information can not be used as proof of dumping in the United States if the Secretary in his investigation finds adequate information available on the sales price in the home market of the exporting country.

17. The Japanese have complained to the GATT about our Gilmore decision. Please describe the nature of their complaint.

How does the plan described in this morning's (November 8) newspapers comply with the GATT antidumping code?

To your knowledge, what changes are the U.S. proposing in the GATT antidumping code? What changes are other countries proposing?

Answer. The Japanese complaint to the GATT concerning the Gilmore Tentative Determination alleged: (a) inadequate information concerning "injury" to an appropriately defined "industry" existed before the U.S. investigation was initiated or the Tentative Determination was made; (b) Japanese home market prices were "arbitrarily" disregarded in determining that such prices did not provide an adequate basis for determining "normal value;" (c) the criteria for determining the "cost of production" of steel (below which the prices in the home market were alleged to have occurred) failed to account for such matters as the disruption to the business cycle caused by the "oil crisis" of 1973; and (d) the use of a mandatory 8 percent profit margin in establishing "constructed value" as a measure of "fair value" was contrary to Article 2(d) of the Code, which mandates the use of profits normal in the domestic industry of the exporting country. The United States delegation to the GATT Antidumping Committee vigorously defended the Tentative Determination in Gilmore, pointing out (a) substantial information on injury to at least a regional industry was available both before the investigation was formally initiated and at the time of the Tentative Determination; Article 10(a) of the Code only requires that evidence of injury be of record and not that a final decision on its existence be made; (b) home market prices were disregarded only after the Japanese producers had declined to furnished evidence of their costs of production and such costs had then been calculated from the best evidence otherwise available—which had indicated that such costs exceeded virtually all home market prices; (c) the determination of "costs of production" had been made in the light of the two-pronged test provided by the statute, in which costs are examined within a discrete period of investigation and projected over a "reasonable period" of a business cycle; and (d) the 8 percent pre-tax margin of profit in the statute was reasonable in light of the profit margins of all U.S. manufacturing industries for the past 30 years.

We believe that the "trigger price mechanism" (TPM) proposed by the Task Force chaired by Under Secretary Solomon is fully consistent with the GATT Antidumping Code. The TPM is not what the newspapers of November 8 reported and, as indicated at the time of the Hearings on that date, we see no reason to attempt to justify the conjectural plan described in the newspapers.

However, the TPM is, we believe, an appropriate exercise of the statutory power of the Secretary to initiate investigations under Section 201(a) of the Antidumping Act and is fully consistent with Article 5(a) of the Code. That Arti-

cle permits self-initiation of antidumping investigations in "special circumstances . . . if [the authorities] have evidence both on dumping and on injury resulting therefrom." The situation in the domestic steel industry today is, in our judgment, a "special circumstance." Steel is a primary U.S. industry; trade in steel is of enormous importance both to the United States and to our principal trading partners; the number of antidumping complaints filed with respect to steel products within so brief a time span is unprecedented. The TPM envisions the continual collection of information concerning all imports as well as of prices and costs of production in the principal countries exporting steel to the United States. Information relating to the condition of the domestic industry, including employment, capacity utilization, prices, import penetration and profits will also be ascertained periodically. The Secretary will, thus, at all times be in a position to initiate accelerated antidumping investigations if significant imports below the trigger prices are observed and the information being collected and on hand indicates that such imports may be below "fair value" and are causing or are likely to cause injury to the U.S. industry.

At this time Treasury is not proposing any specific changes in the International Anti-Dumping Code nor have specific changes been proposed by other Code signatories. Treasury does expect that a meeting of the Anti-Dumping Code Committee will be convened in early 1978, at which time possible changes may be discussed. However, the principal focus of the meeting will probably be technical issues.

18. If dumping margins are assessed against unfabricated products—such as the carbon plate steel in the Gilmore decision—there is the strong likelihood that the foreign producers will move into the export of higher-cost, more labor-intensive fabricated products. For example, the Japanese are already selling steel bridges and fabricated oil rigs—which are about 20 percent carbon plate—at prices considerably below domestic capabilities.

What would be your opinion of legislation that would provide that when a finding of dumping of a product is tentatively made, other products which include the dumped product as a component would have to submit proof that that component is not being sold at the dumping price?

In other words, why should the oil rig industry have to start from scratch if they want to bring a dumping case? Why should not the burden be on the foreigner that the carbon plate in the oil rig is not valued at the price on which dumping has been established?

Answer. A finding under the Antidumping Act applies to the particular class or kind of merchandise which was the subject of the fair value investigation. This means that when products subject to a dumping finding are included in finished products and those finished products are a different class or kind of merchandise, it is not possible under the Antidumping Act as presently worded to apply the finding to the finished product. The rationale for this provision is clear in the case of a manufacturer of a finished product who is unrelated to the producer of the dumped product. Since a dumping finding is normally based upon the sale of products in the home country at prices higher than those in the U.S., the manufacturer of the finished product must presumptively purchase the higher priced home country product. This analysis would argue against a prima facie case of dumping of the finished product.

However, there may be cases where the producer of the dumped product is in a position to sell to a related manufacturer of a finished product. In those cases, there may be a basis for extending the dumping finding to the finished product. But an amendement to the Antidumping Act would be needed and, from a technical standpoint, the problem seems extremely difficult to solve in the case of complex fabrications, such as the oil rig in the example cited. On the other hand, attempted evasion of the Act through minimal alteration or other value added by a "fabricator" of a product, so as to avoid its classification as the merchandise subject to a finding, could probably be reached without much difficulty. However, such efforts at evasion have not been brought to our attention and, to the best of our present information, are not likely in the steel industry.

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